



Commonwealth of Virginia
Virginia Information Technologies Agency

NUANCE SPEECHATTENDANT SOFTWARE, & RELATED HARDWARE AND SERVICES

Authorized Users: State agencies, Institutions, and other public bodies as defined in Section 2.2-4301 of the VPPA

Date: June 6, 2007

Contract #: VA-070307-SEAM

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FIN: 20-3033676

Term: March 7, 2007 – March 6, 2009

Payment: Net 30 days

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NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase products or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

CONTRACT #VA-070307-SEAM
CONTRACT CHANGE LOG

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HARDWARE AND MAINTENANCE CONTRACT

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HARDWARE AND MAINTENANCE CONTRACT

THIS HARDWARE AND MAINTENANCE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Seamless Mobility Solutions, Inc. ("Supplier") to be effective as of March 7, 2007 ("Effective Date").

1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to sell certain of Supplier's Product, including but not limited to Nuance SpeechAttendant software and related software, hardware and peripherals, and to provide various related Services to the Authorized Users. As the Nuance catalog of SpeechAttendant products and related items and services expands to accommodate new products or enhancements in functionality, compatibility, integration, etc., VITA may update exhibits to this Contract to include those items.

2. DEFINITIONS

A. Acceptance

Acceptance shall take the form of completed and successful acceptance testing in conformance with the Requirements as determined by the Authorized User.

B. Authorized User

All Public Bodies, including VITA and all Commonwealth agencies, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

C. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order issued hereunder, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

D. Maintenance Level

The parameters of Maintenance Services, including the times during which and time-frames in which Supplier shall respond to a request for Maintenance Services. The available Maintenance Levels shall be as defined in Exhibit D hereto. The actual Maintenance Level for a unit of Product shall be set forth in the executed order for Maintenance of that Product referencing this Contract.

E. Maintenance Coverage Period (MCP)

The term during which Maintenance is to be provided for a unit of Product.

F. Maintenance Services (or Maintenance)

Those Services, preventive and remedial, performed by Supplier at Authorized User's request in order to ensure continued operation of the Product.

G. Operating Condition

That condition which allows the Product to function in a normal, acceptable working manner, as designed by the Product manufacturer.

H. Party

Supplier, VITA, or any Authorized User.

I. Product

Hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation and related accessories as set forth on Exhibit C provided pursuant to this Contract.

J. Receipt (of Product)

An Authorized User or its Agent has physically received the Product at the correct "ship to" location.

K. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product described in the applicable documentation, Exhibit A and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by VITA and Supplier or the Parties to an order issued hereunder.

[Note: In case of conflict, see the Entire Contract clause for order of precedence.]

L. Response Time

The time between Supplier's receipt of Authorized User's request for Maintenance and the time Supplier commences repair of the Product.

M. Service

Any Product-related service provided, by Supplier under this Contract, including certain Maintenance Services for the Product.

N. Software Manufacturer

The licensor, if not Supplier, of the System Software provided by Supplier under this Contract.

O. Supplier

Includes any individual who is an employee, agent, sub-contractor, or independent contractor of Supplier to provide Products and/or Services under this Contract.

P. System Software

The operating system code, including software, firmware and microcode, (object code version) for each Product, including any subsequent revisions, as well as any applicable documentation.

Q. VITA

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

R. Warranty Period

Three (3) years following Acceptance of each Dell brand Product; one (1) year following Acceptance of each Product that is not a Dell brand Product.

3. TERM AND TERMINATION

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. Subject to the mutual written agreement of VITA and Supplier, this Contract may be extended for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written notification to the Supplier stating the extension period, 30 days prior to the expiration of any current term. Warranty on or Maintenance Services for any Product ordered during the term of the Contract may extend beyond the term of this Contract. Expiration of the term of the Contract shall not affect any perpetual license granted hereunder.

VITA may terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, upon not less than ten (10) days prior written notice at any time for any reason. Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section of this Contract. Upon termination, the Commonwealth shall have no future liability except for Services rendered or Product delivered by Supplier prior to the termination date. Termination of this Contract or any order shall not affect any perpetual license granted to an Authorized User pursuant to this Contract, provided such Authorized User has paid all fees for such license.

The terms of this Section shall not apply to termination for non-appropriation of funds.

[Termination by Supplier is not acceptable.]

4. PURCHASE, DELIVERY, INSTALLATION AND ACCEPTANCE

A. Orders

Notwithstanding all Authorized User's rights to license or purchase Supplier's products or services under this Contract, an Authorized User is under no obligation to license or purchase from Supplier any of Supplier's products or services. This Contract is non-exclusive and all

Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the products and services provided by Supplier.

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Purchase Order (PO): An official PO form issued by an Authorized User.
- ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Products and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

B. Supplier Quote and Request for Quote

Supplier shall, upon request of an Authorized User, provide a quote based on such Authorized User's specific Product requirements. Such quote should include (a) a detailed description of each item proposed, at the Exhibit C line item level, (b) the quantity of each such item, (c) the contract price, and (d) an extended price. Any purchase from Supplier resulting from such quote shall be subject to the terms and conditions specified and outlined in this Contract and any subsequent modifications. The Authorized User may request additional terms and conditions subject to mutual agreement of Supplier. To the extent that any terms and conditions of the Authorized User are inconsistent with the terms and conditions of this Contract, the terms and conditions of this Contract shall supersede.

Should an Authorized User determine that a competitive process is required to ensure it receives the best value, such Authorized User may, at its sole discretion, on a case-by-case basis and upon approval by VITA, use a Request for Quote (RFQ) process to obtain product identical or similar to that provided by Supplier pursuant to this Contract. The RFQ process is typically used when an Authorized User requires a complete solution that may be fulfilled by Products and Services herein, but whose complexity or size may result in economies that could not be passed on to the Authorized User within the confines of the established contract catalog discount pricing. When an RFQ is used, the project timing and requirements will be clearly outlined in the RFQ document. In some situations, the Authorized User may not identify the exact specifications required. If that is the case, the RFQ respondents will be given the opportunity to identify and propose their recommended specifications.

In cases where the RFQ process is invoked, the Authorized User will issue an RFQ describing its requirements to potential suppliers, and suppliers will provide, at their discretion, within the timeframe specified in the RFQ, a detailed Statement of Work (SOW)-based quote. Any quote submitted to the Authorized User as a result of this process shall include (a) a detailed description of each item proposed, at the Exhibit C line item level, (b) the quantity of each such item, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended/total price.

Generally, the Authorized User will select the supplier offering the lowest total cost proposal. However, non-price factors may be included in the evaluation criteria for a given RFQ. Any purchase from Supplier that is a result of the RFQ process shall be subject to the terms and conditions specified and outlined in this Contract and any subsequent modifications. Additional terms and conditions may be requested or mandated within the RFQ document. To the extent

that any terms and conditions of the Authorized User are inconsistent with the terms and conditions of this Contract, the terms and conditions of this Contract shall supersede.

C. Delivery Procedure

Supplier shall deliver all Product F.O.B. destination, with such destination being the "ship to" address as specified in the applicable order. For orders for which Supplier is to provide installation of the Product, Supplier shall bear all risk of loss of or damage to the Product until Acceptance by the Authorized User. For orders for which Supplier is not to provide installation of the Product, Supplier shall bear all risk of loss or damage to the Product until Receipt. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. Each shipment shall include a packing slip indicating this Contract number, the Authorized User's order number, the part number, a description of the Product shipped and the quantity shipped. Each package in any shipment shall be numbered, shall have stenciled on one end and one side a description of the quantity of Product contained therein by part number and description and shall conspicuously display the number of the package in that shipment which contains the packing slip. If required by the Authorized User, Supplier shall bar code all packages shipped. If any loss to, or damage of, the Product occurs prior to Acceptance by the Authorized User, Supplier shall immediately provide a replacement item. Title to Product, excluding System Software, shall pass upon Acceptance.

Supplier shall make available all appropriate and/or related user documentation at the time of delivery of the first unit of each different Product type. Product delivered without the appropriate and required documentation shall be considered "shipped short" until the applicable documentation has been received.

D. Late Delivery

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Section shall constitute a material breach of this Contract resulting in damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the Effective Date of this Contract. As an estimate of the minimum amount of damages such Authorized User will suffer, Supplier agrees to credit the Authorized User an amount equal to three percent (3%) of the total purchase price, for each day of undelivered or unoperational Product for a period of 25 days following the agreed upon delivery date. If the delay lasts longer than 25 days, the Authorized User may immediately cancel the order and collect as late delivery damages 75 percent (75%), and the Authorized User reserves any and all other remedies available at law or in equity. Any credit due the Authorized User will be applied to the next periodic invoice.

In the event the Supplier fails for any reason to deliver within three (3) days of the agreed upon delivery date set forth in the order/schedule, the ordering Authorized User, at its own discretion, may give Supplier oral or written notice of such breach. Once notice by such Authorized User is sent or given, the Authorized User may immediately procure the items from another source. Once the Authorized User has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act), the Authorized User may charge-back Supplier, in which case Supplier agrees to reimburse the Authorized User for any difference in cost between the original contract price and the Authorized User's cost to cover from the alternate source. In no event shall any Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of such Authorized User's notice of breach.

E. Purchase Price and Price Protection

Exhibit C sets forth the prices by Product type (including whole units and repairable major components thereof) and for warranty services and Maintenance Services, and the appropriate Commonwealth discounts. Prices for Product shall not increase and the discounts shall not decrease for a period of not less than two (2) years from the Effective Date of this Contract. Thereafter, any increase in price shall be limited to once per twelve (12) month period and shall not exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, for the expenditure category "Information technology, hardware and services" as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/>), for the effective date of the increase compared with the same index one (1) year prior. Supplier shall demonstrate the added value for any requested

price increase. Any change in price shall be submitted to all Authorized Users in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Semi-annually, VITA may check the prices for Product against the CPI-U, as defined above, for the expenditure category "Information technology, hardware and services", and the prices in Exhibit C shall be appropriately reduced to ensure continued price competitiveness, if required. Supplier agrees to offer Product price reductions to ensure compliance with the Competitive Pricing Section.

F. Supplier-Sponsored Product Promotions

The Supplier, at its discretion, may sponsor Product and Service promotions during the Contract term or any extensions thereof. Should Supplier choose to sponsor such a promotion, Supplier shall provide in writing to VITA, at least five (5) days prior to the promotion, the following information: (i) the dates of the promotion or the duration of the promotion to include the commencement date and the ending date; (ii) the exact Products or Services covered in the promotion; and (iii) the pricing or percentage discount offered during the promotion. VITA shall communicate to Supplier in writing its agreement to the promotion.

The Supplier shall be in breach of the Contract in the absence of a written agreement regarding the promotion. In any event wherein the Supplier proposes prices that are different than the Contract prices to any Authorized User, without first obtaining VITA's agreement, the Supplier shall be in breach of the Contract, and VITA shall have all remedies available under Contract and law and in equity.

All Supplier-sponsored Product or Service promotions shall be available to all Authorized Users. Should the Supplier request a promotion that would be limiting, either through product configuration or quantities of Products and Services, VITA at its discretion, may not provide a written agreement. VITA and Supplier agree that promotions shall not target any one Authorized User, or a few Authorized Users.

VITA and Authorized Users, at their discretion, may assist in advertising the promotion. This assistance may consist of advertising space on Authorized User web sites, or other assistance at Authorized Users' discretion.

G. Purchase Payment Terms

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for those products or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed. Termination for lack of appropriations shall not affect any perpetual license granted to an Authorized User pursuant to this Contract, provided such Authorized User has already paid all fees for such license.

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Product has been accepted. Charges for Product or Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over billed for each month that such over billing continues.

Product shipped without the applicable Documentation may not meet Acceptance criteria, and payment shall not be due until after the required Documentation is provided.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. All payment terms are net 30 days after Acceptance.

H. Invoice Procedure

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Products or Services have been accepted. Payment for Maintenance Services shall be annually in arrears unless otherwise stated herein. No invoice shall include any costs other than those identified in the executed order referencing this Contract, and such order shall not include any costs other than those identified in Exhibit C. Without limiting the foregoing, all shipping costs are

the Supplier's responsibility except to the extent such charges are identified in Exhibit C, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

- i). Product or Service type and description
- ii). Product serial number, if any
- iii). Quantity, charge and extended pricing for each Product and/or Service item
- iv). Applicable order date
- v). Ship date
- vi). Ship-to location contact name
- vii). This Contract number and the applicable order number
- viii). Supplier's federal Employer Identification Number (EIN).

Supplier shall submit separate invoices for the Maintenance charges (detailing the Product types and quantities by Authorized User site), for Service Out-of-Scope billable activities, and for any installation services, including the appropriate Product Service Record or other agreed upon written instrument. Additional invoices may be required by Authorized User, from time to time detailing charges for Product at affiliate locations by corporate department.

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS SUCH AUTHORIZED USER IS VITA.

I. Product Trade-in and Upgrade

An Authorized User and Supplier may negotiate trade-ins at any time during the Contract term.

J. Product Installation

Unless otherwise agreed, Supplier shall provide the initial installation of all Product at no additional charge. Installation shall include: unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, testing, related necessary services to allow for Acceptance by the Authorized User.

All Product installations shall comply with building and facilities standards established by the ordering Authorized User. If such Authorized User installs the Product, Supplier shall provide all reasonably necessary telephone assistance at no charge.

K. Product Acceptance

Product shall be deemed accepted when the ordering Authorized User determines that it successfully operates in accordance with the Requirements, but not longer than 60 days from installation. Such Authorized User shall commence acceptance testing within a reasonable time period after Receipt of the Product or within such other time period mutually agreed upon by the Parties to the order. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts. Authorized User shall provide to Supplier written notice of Acceptance upon successful Acceptance testing.

L. Cure Period

Supplier shall correct any non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Product for re-testing within ten (10) days of written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to deliver Product which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Product in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Product with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Product while reserving its right to revoke Acceptance if timely correction is not forthcoming.

M. Product Discontinuation

During the term of this Contract, if any Product listed on Exhibit C is discontinued and Supplier does not offer a substitute acceptable to VITA, Supplier shall, for each Authorized User who purchased the discontinued Product, continue to meet such Authorized User's needs for the discontinued Product for not less than 12 months. Additionally, Supplier shall make available to the Authorized User maintenance parts for discontinued Product for five (5) years from the date of such discontinuation. In every event, Supplier will provide any Authorized User with 120 days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

N. Supplier's Report of Sales and Industrial Funding Adjustment

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and the VITA Controller (contact information provided below), and shall report all invoices submitted by Supplier pursuant to the Contract to all Authorized Users during the preceding month. The report shall also show a cumulative record of all invoices submitted to all Authorized Users pursuant to the Contract.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days of submitting the "Supplier Monthly Report of Sales". The IFA payment shall be submitted in the form of a check or electronic funds disbursement made payable to the Treasurer of Virginia. The IFA payment is equal to two percent (2%) of total sales under this Contract during the relevant month, as determined by the amount invoiced to Authorized Users. The IFA payment shall reference this Contract number, "report amounts", and "report period".

Supplier shall remit IFA payments made via check to VITA, Attention VITA Controller. Supplier shall also provide a copy of the IFA payment to the VITA IFA Coordinator via email or fax. Failure to comply with reporting and payment requirements of this section may result in default of Contract.

Contact Information

| | |
|---|---|
| VITA Controller 110 South 7 th Street, 3 rd Floor Richmond, VA 23219-3931 VITAController@vita.virginia.gov | VITA IFA Coordinator 110 South 7 th Street, 1 st Floor Richmond, VA 23219 804-371-5980 (Phone) 804-371-5969 (Fax) ifacoordinator@vita.virginia.gov |
|---|---|

O. Small, Woman, and Minority-Owned Business (SWaM) Subcontracting Report

By the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWaM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors' certification status. Supplier shall submit the report to SWaM@vita.virginia.gov.

P. Universal Service Fund

Supplier agrees to make available all Products and Services as listed and priced herein to any Authorized User which is a USF participant. Supplier agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. Supplier agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of this Contract for USF participation shall be the sole responsibility of the Supplier.

Supplier warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive USF

allocations/disbursements for products and services provided pursuant to this Contract to Authorized Users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those Authorized Users. Supplier also agrees to maintain those qualifications and to assist Authorized Users in applying for and receiving these allocations/disbursements.

5. PRODUCT SUPPORT

A. Authorized User or Third Party Support

1. Documentation and Support Availability

In the event that VITA terminates this Contract, Supplier shall provide all the necessary user and installation documentation and maintenance and repair training reasonably required to enable any Authorized User to maintain and repair the Product itself or to obtain support and maintenance services from a third-party. Supplier shall also provide the documentation and training necessary to allow any Authorized User to self-maintain to the subcomponent level. In addition, Supplier agrees to provide, for a period of five (5) years from the date of the last purchase, spare parts and components at the cost set forth in Exhibit C, including those solely sourced by Supplier, to enable any Authorized User or its designated third-party maintenance provider to provide full maintenance and repair of the Product.

2. Timeliness and Price

Supplier agrees to make the above-referenced documentation, training and spare parts and components available within fifteen (15) days following receipt of a written request, and at a cost set forth in Exhibit C, such cost not to exceed Supplier's published price list, or the fair market value, but in no event at prices above the lowest price paid by any other customer of Supplier. In addition, Supplier agrees to sell Product, as set forth in Exhibit C attached hereto, to any Authorized User's third-party maintenance provider under contract with such Authorized User, at the prices as set forth in Exhibit C, for the sole purpose of supporting the Authorized User's installed inventory. Supplier agrees to document and provide to all Authorized Users in a timely manner any and all revisions to information and parts and components lists as they are developed or supplied by Supplier.

B. Engineering Changes and Product Modification

For each Authorized User that purchased Product, Supplier agrees to document and provide to such Authorized User any and all planned engineering changes to the Product ninety (90) days prior to incorporation. All engineering changes which affect the safety of the Product ("Safety Changes") or the ability of the Product to meet the published specifications ("Performance Changes"), shall be made at no cost to the Authorized User. Supplier shall install all Safety Changes and Performance Changes within thirty (30) days after issuance of the engineering change order by the Product manufacturer. If such engineering changes affect Product processing or operating capability, they shall be scheduled at the Authorized User's request as to time and at the Authorized User's option. The Authorized User shall have the option to waive/pre-approve all other engineering changes planned by Supplier on the Product delivered or planned for delivery to the Authorized User.

C. Training

The Product purchase price includes all costs for the training of one trainer at the ordering Authorized User's designated location on the use and operation of the Product, including instruction in any necessary conversion of such Authorized User's data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit C.

D. Parts and Maintenance Support

Supplier agrees to make available new/certifiable as new spare parts and the Maintenance Services identified in Exhibit D and Section 7 herein for each Product type ordered by an Authorized User, for five (5) years from the date of shipment of the last unit of any given Product type. Thereafter, Supplier shall advise such Authorized User of its intent to discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User.

Supplier shall notify the Authorized User one (1) year prior to the effective date of any such discontinuance, and shall provide to the Authorized User the opportunity to purchase spare parts

in a quantity adequate to support its installed base. Should Supplier advise the Authorized User of its intent to discontinue certain parts for any Product type ordered by the Authorized User, the Authorized User has the option to request and Supplier has the obligation to provide, all documentation, including source code, required to ensure ongoing support, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider within thirty (30) days prior to the discontinuance date or replace the unsupported Product with a supported Product at no more than the cost delta between the supported Product and the unsupported Product.

6. WARRANTY AND REMEDY

A. Supplier

Supplier shall perform its warranty and maintenance obligations hereunder in accordance with the highest professional duty of care.

B. Ownership

Supplier is the owner of the Product or otherwise has the right to grant to any Authorized User title to or the right to use the Product provided hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third-party. Upon receipt of payment, the ordering Authorized User shall obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests and encumbrances.

C. Supplier Viability

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract, that no legal proceedings have been threatened or brought against Supplier that could materially adversely affect performance of this Contract, and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

D. Compatibility

Supplier warrants that each Product provided hereunder is, and shall continue to be, data, program, and upward compatible with any other Product available or to be available from Supplier within the same family of Products so that data files created for each Product can be utilized without adaptation of the other Products, and so that programs written for the Product shall operate on the next generation of Products, and not result in the need for alteration, emulation, or other loss of efficiency for a period of not less than five (5) years.

E. Product

Supplier warrants the following with respect to the Product:

- i). Product is pursuant to a particular Request for Proposal, and therefore, such Product shall be fit for the particular purposes specified by VITA and Supplier is possessed of superior knowledge with respect to the Product and is aware that Authorized Users are relying on Supplier's skill and judgment in providing the Product;
- ii). If the Product is pursuant to a particular quote or Request for Quote (RFQ), such Product shall be fit for the particular purposes specified by the Authorized User requesting such quote or issuing such RFQ and Supplier is possessed of superior knowledge with respect to the Product and is aware that such Authorized User is relying on Supplier's skill and judgment in providing the Product.
- iii). The Product shall be free of defects in material, design and workmanship;
- iv). Upon delivery, the Product shall be new and in good Operating Condition and shall have all released engineering changes released to date already installed;
- v). Each Product delivered hereunder shall function in conformance with the Requirements;
- vi). No engineering change made to the Product or System Software revisions shall degrade the performance of the Product to a level below that defined in the applicable Request for Proposal, and Product manufacturer's published specifications;

- vii). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and
- viii). The System Software shall not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the System Software, nor shall Supplier disable any Authorized User's use of such System Software through remote access or otherwise. If the System Software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes shall be perpetual and non-expiring.

F. Performance Standards and Mean Time Between Failure

For a period of five (5) years following acceptance of the Product by an Authorized User, Supplier warrants that the Product's performance standards and Mean Time Between Failure (MTBF) standards, calculated based upon such Authorized User's installed base of Supplier Product, shall be at least as good as the standards set forth in Exhibit B. If the Product fails to satisfy (i) the MTBF standards or (ii) the performance standards for that Product type as set forth herein, Supplier shall pay for any and all additional repairs, parts and labor required to bring Product to the appropriate level set forth in Exhibit B, including the cost to retrofit the entire installed Product base. If Supplier fails to so modify or replace the Product so as to achieve the MTBF standards within thirty (30) days, the Authorized User may, at its option, return such Product and receive a full refund during the Product warranty period, or if the warranty has expired, receive a straight line pro-rated refund, by year thereafter for the five (5) year period following installation of the Product.

G. Warranty Services

Supplier shall provide warranty services (including unlimited telephonic support and all necessary travel and labor) during the Warranty Period at the prices identified in Exhibit C without additional charge to maintain the Product in accordance with the Requirements.

Exhibit D provides detailed descriptions of the Supplier's warranty and maintenance offerings and responsibilities as well as available remedies to the Authorized User in the event Supplier fails to perform its warranty and maintenance obligations. Any remedies shall be paid to the Authorized User on a quarterly basis. Exhibit D defines coverage periods, response times, and restore times.

An Authorized User may elect, at any time, an alternative warranty level offered by Supplier. Such amendment shall take effect within thirty (30) days following Supplier's receipt of Authorized User's written notice, in the form of a modification to an order.

1. Product Covered

Exhibit C lists all Product types covered under warranty. Supplier shall maintain an inventory record ("Inventory Record") of all units of Product covered under warranty by type, quantity and location. Inventory Record shall also include the end date for each unit's Warranty Period or, if applicable, the period for which the unit of Product is covered under a Maintenance Agreement. Product quantities and types may vary as Product is added or deleted from coverage. Supplier shall be notified in writing of any Product removed from service, and Supplier shall automatically amend the Inventory Record without further action by Authorized User to reflect the relocation, addition or deletion of Product. No Authorized User is obligated to continue warranty on Product that has been removed from service, provided Supplier has been notified in writing of such removal. Supplier shall provide a copy of the most current Inventory Record to any Authorized User upon request of such Authorized User.

2. Preventive Maintenance

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit D.

3. Remedial Maintenance

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit D.

4. Replacement Parts

Supplier may install or replace parts and components as it determines necessary to ensure hardware operation. Such parts and components used for replacement ("Replacement Parts") may be new or certifiable as new, provided Supplier shall use only new Replacement Parts or Replacement Parts of equal quality and functionality. Any replacement hardware shall become the sole property of such Authorized User and any defective hardware shall become the sole property of Supplier. Supplier shall be solely responsible for all shipping costs. Supplier agrees to provide and maintain, in good repair, adequate Replacement Parts and test equipment required for the Maintenance of the installed base of hardware. Should a delay in restoring the hardware to good Operating Condition be caused by the failure of Supplier to have adequate Replacement Parts, the ordering Authorized User shall be entitled to a payment of one-half percent (1/2%) of the hardware purchase price, plus one-half percent (1/2%) of the annual warranty or maintenance charge (if applicable) identified in the relevant order per hour for each hour of hardware downtime caused by such failure. The total remedy payment per month shall not exceed an amount equal to ten percent (10%) of the purchase price, plus the total prorated monthly warranty or maintenance charge (if applicable) for the affected hardware and shall be paid to the Authorized User on a quarterly basis.

5. Spares

Supplier agrees to provide all spare parts as shall be required to maintain the hardware covered under warranty. Supplier agrees to make available and distribute such parts, in good repair, to each engineer servicing the hardware covered under warranty.

Supplier agrees to maintain, in good repair, adequate spares and test equipment for all the Hardware. Delays in restoring the hardware to the Operating Condition, due to inadequate spares shall result in a nonperformance payment of one-half percent (1/2%) of the hardware purchase price, plus one-half percent (1/2%) of the annual warranty or maintenance charge (if applicable) identified in the relevant order per hour for each hour of processing downtime. The total remedy per month shall not exceed an amount equal to the monthly warranty charge for the affected hardware and shall be paid to the Authorized User on a quarterly basis.

6. Notification and Correction of Defects

Supplier shall promptly notify all Authorized Users of any defects or malfunctions in the Product or documentation of which it learns from any source, correct any such defects or malfunctions or provide a workaround until corrected within five (5) business days of knowledge of such defect or malfunction and provide all Authorized Users with corrections of same, at no additional cost. In the event that any Authorized User identifies, within the twelve (12) month period following Acceptance, any design defect or non-conformance to the Requirements, Supplier, at Supplier's sole expense, shall provide all parts, components and services required to correct the design defect and restore such item or shall replace it, so that it functions as warranted. If Supplier is unable to make the failed Product conform within five (5) days following notification by such Authorized User, Supplier shall, at the Authorized User's request, accept return of such Product(s), and return all monies paid for the failed units. Service provided by Supplier to correct the design defect shall be on-site. Supplier shall be solely responsible for the shipping cost to return any Product to Supplier.

7. System Software Warranty

As part of the standard warranty offering, for a period of not less than twelve (12) months beginning on the date of Acceptance, Supplier shall provide the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the System Software in accordance with the Requirements:

a) New Releases

Supplier's responsibilities related to new releases of System Software and Documentation are described in Exhibit D.

b) Coverage

Supplier's offerings and responsibilities related to coverage for telephonic and written consultation in connection with use, problems, and operation of the System Software are described in Exhibit D.

c) Response and Restore Times

Supplier's response and restore times related to use, problems, and operation of the System Software, and any associated remedies, are described in Exhibit D.

In addition to any remedies described in Exhibit D, if Supplier is unable to make the System Software conform, in all material respects, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of the System Software and any Product rendered unusable due to the non-conforming System Software, and return all monies paid by such Authorized User for the returned System Software and Documentation and Product, if applicable.

d) Software Evolution

Should Supplier or Software Manufacturer merge or splinter the System Software previously provided to any Authorized User, such action on the part of Supplier or Software Manufacturer shall not in any way result in any Authorized User being charged additional license or support fees in order to receive enhancements, releases, upgrade or support for the System Software.

8. Additional On-site Services

For those locations where Authorized User has selected dedicated on-site coverage, Supplier shall provide the following services in addition to warranty services: (i) relocation of previously installed hardware; (ii) assistance to Authorized User's communications department in mutually acceptable duties related to the warranty services provided under this Contract; and (iii) cabling, if applicable. Authorized User's order and the Inventory Record shall identify all locations that are covered by on-site coverage.

9. Escalation Procedures

Escalation Procedures are set forth in Exhibit E.

10. Additional Maintenance Service

An Authorized User may, at any time it deems necessary, request maintenance service which is outside the scope of the warranty services ("Additional Maintenance Service"), including, but not limited to: (i) service on equipment not covered by this Contract, (ii) repair of damage or replacement of parts of hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices by Authorized User, or (iii) service outside the applicable hours of service specified in an executed order referencing this Contract. The charge for such Additional Maintenance Service shall be at the hourly rate specified in Exhibit C and shall be inclusive of all expenses. Maintenance requested for a unit of hardware within the forty-eight (48) hour period immediately following Remedial Maintenance performed on the same unit of hardware for the same problem, shall be provided at no charge. Requests for Additional Maintenance Service shall only be approved for payment by the Authorized User when a Product Service Record is included with the Additional Maintenance Service invoice.

11. Dispatch Procedures and Product Service Record

Authorized User's designated control organization shall have the exclusive authority to request warranty services. Supplier shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

Upon request by the Authorized User, Supplier shall provide a Product Service Record for reporting details of all warranty services performed for each Product under warranty. Product Service Record shall record the following:

- a) Installation/Relocation/Removal/Modifications
- b) Remedial actions
- c) Preventive actions
- d) Service Out-Of-Scope

12. Product Maintenance Services and Renewal Options

Sixty (60) days prior to the expiration of the Warranty Period, Supplier shall notify the Authorized User, and the Authorized User, at its sole discretion, may order from Supplier Maintenance Services, including System Software Maintenance for a period of one (1) year (Maintenance Coverage Period) and for the annual fee identified in Exhibit C. Supplier warrants that it shall make Maintenance Services available for all the Product, including System Software, listed in Exhibit C, or which are components of Products listed in Exhibit C, for a period of at least five (5) years from the expiration of the initial Warranty Period of any Product provided to an Authorized User pursuant to this Contract. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services, by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

THE OBLIGATIONS OF SUPPLIER UNDER THIS WARRANTY AND REMEDY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

7. MAINTENANCE SERVICES

Supplier shall provide Maintenance Services (including unlimited telephonic support and all necessary travel and labor) during the Maintenance Coverage Period (MCP) at the prices identified in Exhibit C without additional charge to maintain the Product in accordance with the Requirements.

For all Product that is not a Dell-branded product, Exhibit D provides detailed descriptions of the Supplier's warranty and maintenance offerings and responsibilities as well as available remedies to the Authorized User in the event Supplier fails to perform its warranty and maintenance obligations. Any remedies shall be paid to the Authorized User on a quarterly basis. Exhibit D defines coverage periods, response times, and restore times.

For any Product that is a Dell-branded product provided to an Authorized User pursuant to this Contract, Supplier shall offer Dell's standard maintenance services. A description of Dell's standard maintenance services is attached hereto as an attachment to Exhibit D. Under this agreement, Supplier is providing Dell Products and Dell's standard maintenance services as described in Exhibit D. Supplier's providing these products and maintenance services shall in no way be construed as to create any contractual relationship or obligation between the Commonwealth, VITA and Dell or between any Authorized User and Dell. Nor shall such inclusion or provision of Dell products or maintenance services by Supplier be construed as to (i) impose any obligation on VITA or any Authorized User; (ii) limit any legal, equitable, or contractual right of VITA or any Authorized User; or (iii) relieve Supplier of any obligation set forth in this Contract, including, but not limited to, the obligations of indemnification and provision of maintenance services pursuant to an order by an Authorized User.

For purposes of Supplier's maintenance service offerings pursuant to this Contract, any reference in Exhibit D to time, whether standard, daylight, or unspecified, shall mean "Authorized User local time".

A. Ordering

An Authorized User may order Maintenance Services for any Product at any time during the term of the Contract, irrespective of whether such Product is covered under warranty or maintenance at the time the order is issued to Supplier. Each order shall identify:

- i). Product and, if applicable, serial number, for which Maintenance Services shall be provided,
- ii). Maintenance Level to be provided, and
- iii). MCP for the Product Maintenance.

Authorized User may elect, at any time, an alternative Maintenance Level offered by Supplier. Such amendment shall take effect within thirty (30) days following Supplier's receipt of Authorized User's written notice, in the form of a modification to an order.

Unless otherwise agreed to by the Authorized User and Supplier, the MCP for a unit of Product shall be one (1) year from the effective date of any executed order for Maintenance on such Product.

B. Renewal

Sixty (60) days prior to the expiration of the MCP for each unit of Product, Supplier shall notify the Authorized User of such expiration, and the Authorized User, at its sole discretion, may issue an order to Supplier to renew Maintenance Services, including System Software Maintenance Services, for an additional one (1) year period. The annual fee for Maintenance Services shall not exceed the fee charged for the preceding year's Maintenance Services by more than three percent (3%), or the annual change in CPI, as defined in the Purchase Price and Price Protection section, in effect at the time, whichever is less. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services, by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

C. Services

Maintenance Services shall be as follows.

1. Product Covered

Exhibit C lists all Product types for which Supplier offers Maintenance Services. Supplier shall maintain an inventory record ("Inventory Record") of all units of Product covered under Maintenance Agreements by type, quantity and location. Inventory Record shall also include the period for which the unit of Product is covered under a Maintenance Agreement. Product quantities and types may vary as Product is added or deleted from coverage. Supplier shall be notified in writing of any Product removed from service, and Supplier shall automatically amend the Inventory Record without further action by Authorized User to reflect the relocation, addition or deletion of Product. No Authorized User is obligated to continue Maintenance Services on Product that has been removed from service, provided Supplier has been notified in writing of such removal. Supplier shall provide a copy of the most current Inventory Record to any Authorized User upon request of such Authorized User.

2. Preventive Maintenance

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit D.

3. Remedial Maintenance

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit D.

4. Replacement Parts

Supplier may install or replace parts and components as it determines necessary to ensure hardware operation. Such parts and components used for replacement ("Replacement Parts") may be new or certifiable as new, provided Supplier shall use only new Replacement Parts or Replacement Parts of equal quality and functionality. Any replacement hardware shall become the sole property of such Authorized User and any defective hardware shall become the sole property of Supplier. Supplier shall be solely responsible for all shipping costs. Supplier agrees to provide and maintain, in good repair, adequate Replacement Parts and test equipment required for the Maintenance of the installed base of hardware. Should a delay in restoring the hardware to good Operating Condition be caused by the failure of Supplier to have adequate Replacement Parts, the ordering Authorized User shall be entitled to a payment of one-half percent (1/2%) of the hardware purchase price, plus one-half percent (1/2%) of the annual warranty charge (if applicable) identified in the relevant order per hour for each hour of hardware downtime caused by such failure. The total remedy payment per month shall not exceed an amount equal to ten percent (10%) of the purchase price, plus the total prorated monthly maintenance charge (if applicable) for the affected hardware and shall be paid to the Authorized User on a quarterly basis.

5. Spares

Supplier agrees to provide all spare parts as shall be required to maintain the hardware covered under a Maintenance Agreement. Supplier agrees to make available and distribute such parts, in good repair, to each engineer servicing the hardware covered under Maintenance.

Supplier agrees to maintain, in good repair, adequate spares and test equipment for all the Hardware. Delays in restoring the hardware to the Operating Condition, due to inadequate spares shall result in a nonperformance payment of one-half percent (1/2%) of the hardware purchase price, plus one-half percent (1/2%) of the annual maintenance charge (if applicable) identified in the relevant order per hour for each hour of processing downtime. The total remedy per month shall not exceed an amount equal to the monthly maintenance charge for the affected hardware and shall be paid to the Authorized User on a quarterly basis.

6. Notification and Correction of Defects

Supplier shall promptly notify all Authorized Users of any defects or malfunctions in the Product or documentation of which it learns from any source, correct any such defects or malfunctions or provide a workaround until corrected within five (5) business days of knowledge of such defect or malfunction and provide all Authorized Users with corrections of same, at no additional cost. In the event that any Authorized User identifies any design defect or non-conformance to the Requirements, Supplier, at Supplier's sole expense, shall provide all parts, components and services required to correct the design defect and restore such item or shall replace it, so that it functions as warranted. If Supplier is unable to make the failed Product conform within five (5) days following notification by such Authorized User, Supplier shall, at the Authorized User's request, accept return of such Product(s), and return all monies paid for the failed units. Service provided by Supplier to correct the design defect shall be on-site. Supplier shall be solely responsible for the shipping cost to return any Product to Supplier.

7. Advanced Replacement Services

Supplier's advanced replacement service offerings and responsibilities are described in Exhibit D.

8. On-site Maintenance Services

Supplier's on-site maintenance service offerings and responsibilities are described in Exhibit D.

9. System Software Maintenance

During the MCP and as part of the standard Maintenance Services offering, Supplier shall provide the following Maintenance Services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the System Software in accordance with the Requirements:

a) New Releases

Supplier's responsibilities related to new releases of System Software and Documentation are described in Exhibit D.

b) Coverage

Supplier's offerings and responsibilities related to coverage for telephonic and written consultation in connection with use, problems, and operation of the System Software are described in Exhibit D.

c) Response and Restore Times

Supplier's response and restore times related to use, problems, and operation of the System Software, and any associated remedies, are described in Exhibit D.

In addition to any remedies described in Exhibit D, if Supplier is unable to make the System Software conform, in all material respects, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of the System Software and any Product rendered unusable due to the

non-conforming System Software. Supplier shall return all monies paid by such Authorized User for Maintenance Services for the returned System Software and Documentation and Product, if applicable, pro-rated on a monthly basis as of the date the Authorized User reported the non-conformity. If Authorized User returns Product rendered unusable due to the non-conforming System Software, Supplier shall return all monies paid by such Authorized User for the Product. The prorated amount due an Authorized User shall be calculated from the date on which the System Software ceased operating in accordance with the Requirements.

d) **Software Evolution**

Should Supplier merge or splinter the System Software previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User being charged additional license or Maintenance fees in order to receive enhancements, releases, upgrade or support for the System Software.

10. Additional On-site Services

For those locations where Authorized User has selected dedicated on-site coverage, Supplier shall provide the following services in addition to maintenance services: (i) relocation of previously installed hardware; (ii) assistance to Authorized User's communications department in mutually acceptable duties related to the warranty services provided under this Contract; and (iii) cabling, if applicable. Authorized User's order and the Inventory Record shall identify all locations that are covered by on-site coverage.

11. Escalation Procedures

Escalation Procedures are set forth in Exhibit E.

12. Additional Maintenance Service

An Authorized User may, at any time it deems necessary, request maintenance service which is outside the scope of the maintenance services ("Additional Maintenance Service"), including, but not limited to: (i) service on equipment not covered by this Contract, (ii) repair of damage or replacement of parts of hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices by Authorized User, or (iii) service outside the applicable hours of service specified in an executed order referencing this Contract. The charge for such Additional Maintenance Service shall be at the hourly rate specified in Exhibit C and shall be inclusive of all expenses. Maintenance requested for a unit of hardware within the forty-eight (48) hour period immediately following Remedial Maintenance performed on the same unit of hardware for the same problem, shall be provided at no charge. Requests for Additional Maintenance Service shall only be approved for payment by the Authorized User when a Product Service Record is included with the Additional Maintenance Service invoice.

13. Dispatch Procedures and Product Service Record

Authorized User's designated control organization shall have the exclusive authority to request Maintenance Services. Supplier shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

Upon request by the Authorized User, Supplier shall provide a Product Service Record for reporting details of all Maintenance services performed for each Product under Maintenance. Product Service Record shall record the following:

- a) Installation/Relocation/Removal/Modifications
- b) Remedial actions
- c) Preventive actions
- d) Service Out-Of-Scope

8. SCOPE OF USE

Any Authorized User may use the Product, and any software licensed in connection with such Product, on a worldwide basis for the benefit of itself and its agents. Supplier further authorizes use of the Product by third parties who are under contract with an Authorized User to provide outsourcing

services, including but not limited to providing application development services, data processing or facilities management services for the benefit of such Authorized User. For Products to which an Authorized User takes title, and any System Software which is integral to such Products, under the terms of this Contract, there are no restrictions on such Authorized User's subsequent resale or distribution thereof.

9. SOFTWARE LICENSE

Supplier shall provide System Software for Product. Such System Software is licensed directly to the Authorized User by the Software Manufacturer through the end user licensing agreement (EULA) attached hereto as Exhibit E.

A. Authorized User Compliance

Compliance with the terms and conditions of any license granted pursuant to this Contract is solely the responsibility of the Authorized User to which such license is granted and not the responsibility of VITA, unless VITA is the licensee.

B. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for System Software licensed under this Contract, or the fact that such other agreement may be affixed to or accompany System Software upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

10. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to the Commonwealth pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangement with another customer of Supplier or with an Authorized User to provide Software or Services under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

11. CONFIDENTIALITY

A. Treatment and Protection

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by non-disclosure contracts with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

B. Exclusions

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

C. Return or Destruction

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

12. LIABILITY AND INDEMNIFICATION

Supplier agrees to indemnify, defend and hold harmless VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Product or Services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Product or any Product component or that the provision of Services under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Product or Services, or any component thereof; or (b) replace or modify such infringing Product or Services, or any component thereof, with non-infringing Products or Services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Product or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Product. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Product or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES

ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

13. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of the relevant Authorized User's then current security procedures as are pertinent to Supplier's operation and have been supplied to Supplier by such Authorized User and further agrees to comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

Supplier shall indemnify, defend, and hold VITA, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant to this Section.

14. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, or ceases business operations for any reason and other than assignment as allowed by this Contract, then VITA may immediately terminate this Contract on notice to Supplier unless Supplier immediately gives VITA adequate assurance of the future performance of this Contract. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

15. GENERAL

A. Relationship Between VITA and Supplier

Supplier has no authority to contract for VITA or in any way to bind or to commit VITA to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of VITA. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA, and VITA shall have no duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that VITA is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA, shall be reimbursed by Supplier upon demand by VITA.

B. Incorporated Contractual Provisions

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:

<http://www.vita.virginia.gov/procurement/documents/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at <http://www.vita.virginia.gov/procurement/documents/eVATsandCs.pdf> are also incorporated by reference.

The terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically.

C. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

D. Dispute Resolution

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within thirty (30) days. The decision of the relevant public body shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to such public body's alternative dispute resolution (ADR) procedures. Supplier may invoke such public body's ADR procedures, if any, at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

E. Advertising and Use of Proprietary Marks

Supplier shall not use the name of VITA or any Authorized User or refer to VITA or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Authorized User. In no event may Supplier use a proprietary mark of VITA or an Authorized User without receiving the prior written consent of VITA or the Authorized User.

F. Notices

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other notice of such change in accordance with this Section.

G. No Waiver

Any failure to enforce any terms of this Contract shall not constitute a waiver.

H. Assignment

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent

shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be 30 days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

I. Captions

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

J. Severability

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

K. Survival

The provisions of this Contract regarding Software License, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract. In addition, the provisions of this Contract necessary for the use and operation of the Maintenance provisions herein, shall continue in effect through termination of the Maintenance Services ordered pursuant to the Maintenance provisions herein.

L. Force Majeure

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.

M. Remedies

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA reserves any and all other remedies that may be available at law or in equity.

N. Right to Audit

VITA reserves the right to audit those Supplier records that relate to the Product purchased and Services rendered or the amounts due Supplier for such services under this Contract. VITA's right to audit shall be limited as follows:

- i). Three (3) years from Service performance date;
- ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

In no event shall the Supplier have the right to audit, or require to have audited, VITA or any Authorized User.

O. Contract Administration

Supplier agrees that at all times during the term of this Contract an account executive, at Supplier's senior management level, shall be assigned and available to VITA. Roles and responsibilities of the account executive are TBD based on Supplier proposal. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

P. Entire Contract

The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

Exhibit A Product Requirements, as described in Section 5 of the RFP and Supplier's response thereto

Exhibit B Mean Time Between Failure

Exhibit C Prices, Fees, Service Charges and Payment Schedule

Exhibit D Warranty and Maintenance Descriptions

Exhibit E Escalation Procedures

Exhibit F Software Manufacturer's EULA, as amended (for reference only)

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersedes any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit D, *Warranty and Maintenance Descriptions*, Exhibit B, *Mean Time Between Failure*, Exhibit C, *Prices, Fees, Service Charges and Payment Schedule*, Exhibit A, *Product Requirements, as described in Section 5 of the RFP and Supplier's response thereto*, Exhibit E, *Escalation Procedures*.

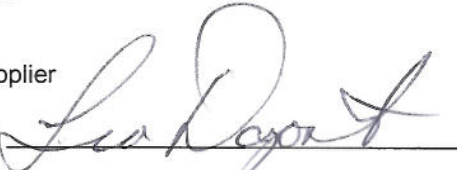
An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement include any terms and conditions inconsistent with the terms and conditions of this Contract, such terms and conditions shall be of no force and effect.

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

Executed as of the last date set forth below by the undersigned authorized representatives of VITA and Supplier.

Supplier

By:



(Signature)

Name:

LEO DAGOSTIN

(Print)

Title:

PRESIDENT

Date:

3/7/07

VITA

By:



(Signature)

Name:

DOUG LESLIE

(Print)

Title:

STRATEGIC SOURCING SPECIALIST

Date:

3/9/2007

Address for Notice:

SEAMLESS MOBILITY SOLUTIONS, INC.

5531 EQUIPMENT DR., STE. B

CHARLOTTE, NC 28262

Attention: DIANE FEHL

Address for Notice:

VITA - SCM

110 S. 7TH ST., STE. 135

RICHMOND, VA 23219

Attention: Contract Administrator

5. REQUIREMENTS / STATEMENT OF NEED

Suppliers are required to indicate their capability of fulfilling each requirement below. Each Supplier's responses will be reviewed and compared across suppliers in order to determine the best solution for VITA.

Detailed requirements are presented in questionnaire format to facilitate direct responses and establish accountability regarding delivery of services by the Supplier. To respond to each requirement, Supplier is asked to enter, in the space provided in Column A, a code that best corresponds to its intended response for the requirement listed.

The acceptable codes for Column A are as follows:

Y - "Yes" - You can fully meet the requirement as documented with your current application or proposed solution. Include documentation showing how you will fulfill the requirement, including any alliances with other suppliers. **Indicate in Column B a description** or if necessary, cross-reference to the appropriate section or attachment of your proposal.

F - "Yes, Future" - You will be able to fully meet this requirement in the near (not longer than six months) future. Provide a proposed start date and cross-reference any attached documentation in Column B.

N - "No" - You cannot meet the requirement and you have no firm plans within six months to be in the position to meet this need.

A blank or "NA" in any box in column A will be interpreted by VITA as an "N"


In a few instances, we have posed some open-ended questions in situations where the answer will not be a yes or no. Please provide adequate information to allow VITA to properly evaluate your proposal.

VSU Speech Enabled Automated Directory & Information System Requirements


| A. Core Features and Functionality | A | B |
|---|---|---|
| 1. Does the proposed system have the ability to transfer calls to telephone numbers retrieved from a database, and to "speak" text retrieved from a database? (M) | Y | The system has the ability to transfers calls to an extension in the database. An audio text could be created to speak the text. |
| 2. Does the proposed system interact with callers by recognizing their spoken commands and retrieve database records using names spoken by callers? (M) | Y | Transfer callers to an extension, audio text or a sub-menu |
| 3. Does the proposed system "speak" text in a natural-sounding spoken voice, with natural-sounding human speech patterns? Please provide a toll-free telephone number, link or other method the Commonwealth's team can use to listen to a system using the same speech engine proposed for the VSU system. | Y | Using enhanced Text-to-speech. You can listen to a demo at: www.nuance.com/realspeak/languages/ |
| 4. Can your system integrate with existing telecommunications services (5ESS switch, centrex services) currently being used by the University? Please describe the degree to which the proposed system would integrate with the existing services. | Y | Integration to the 5ESS would be an ISDN integration -- Integration to a Centrex Service would be an analog integration |
| 5. Can your system use both ISDN and Analog phone lines for access to the voice network? | Y | Independently, yes |
| 6. Can your system be configured to use IP extensions for access to an IP telephony/VoIP network? Describe the degree to which your system is VoIP compatible. | Y | If it just to be able to transfer to an IP extension, then YES. For the actually integration, we integrate with Cisco Call Manager |
| 7. Can your system serve as the primary directory information system for the University? | N | |

| | | |
|--|---|---|
| 8. Can your system handle at least 50 calls per hour, with each call being at least two (2) minutes in duration? (M) | Y | Recommended scenario would be an 8 port solution. |
| 9. Can your system handle at least three (3) calls simultaneously? (M) Please provide a brief but succinct description substantiating the maximum number of simultaneous calls that the system as proposed to be configured for VSU can handle without any degradation in call quality. | Y | The number of calls we can handle simultaneously is dependent on the number of ports. An 8 port system can handle 8 ports simultaneously. |
| 10. Can your system be purchased and owned by the University? | Y | Typical terms are Net30 |
| 11. Does your system include all hardware, software, installation, maintenance and training that is needed for a turnkey, fully operational system? (M) Please ensure that you provide a detailed, line-item listing of all equipment, software, labor, support services, subscriptions, etc. required to provide the turnkey solution proposed. | Y | The solution is available as a turnkey. See SpeechAttendant proposal for the breakdown |
| 12. Is the hardware platform proposed proprietary in nature? | N | We use Dell as the server hardware, and Intel dialogical cards |
| 13. Does the University have the option of providing the necessary hardware? | Y | Only the server -- the Intel dialogical card must be purchased with the software. |
| 14. Does your system operate on a standard personal computer/server platform running Windows 2000/XP operating systems? | Y | The platform runs on Windows 2003 |
| 15. Does your system operate at a minimum voice recognition level of 96%? Please briefly describe the accuracy of your system and the methodology used to measure it. | N | System operates within the 90-95% |
| 16. Does your system support a single directory size of 15,000 records with the option to increase the single database size upwards to 25,000 records? | Y | SpeechAttendant supports up to 25,000 entries. Over that, the application would be SpeechAttendant Large Enterprise Edition. |
| 17. Does each record have the ability to contain multiple fields (i.e. last name, first name, mailbox #, location, and department name) each being a required separate field? | Y | As long as the field is described in the source file |
| 18. Does your system allow the ability to include an unlimited number of customer-defined fields in addition to the fields required in item 13 above (examples include cellular number, pager number, fax number, email address and home number)? | N | However, by default, we already include all of the examples you state in the question |
| 19. Does your system have the ability to speak messages that are frequently needed such as directions to the university for callers who call the attendant to request this particular information? | Y | Via the audio-text entries |
| 20. Does your system have the ability to tier spoken messages (ask questions of the caller and wait for response to get caller to correct message box)? | Y | Sub-menus |
| 21. Can your system also serve as an interactive information system requiring a pin number to access account balance information from other VSU systems? | N | Can only transfer to an existing IVR |
| 22. Can your system be configured to automatically update account balance information on a daily basis, after hours, without human intervention? | N | Can only transfer to an existing IVR |
| 23. Does your system have the ability to read back the requested telephone number and/or information to the caller and give the caller the option of being automatically connected? | N | We can create audio text to read back the number associated to the entry, but can not give the option to connect that call or not. |

| | | |
|---|---|---|
| 24. There may be instances where the caller's class of service should be the determining factor in deciding whether the speech enabled directory should transfer to a campus extension, a local number, or a long distance number (such as President can be transferred to a professor's cellular phone, while a student only gets the campus extension). Does your system provide a mechanism for deciding which number to which to transfer the call based upon information about the caller such as account status, ANI, etc.? | N | |
| 25. Currently when a call is transferred using the Centrex transfer feature, the original calling party's Caller ID information is replaced by that of the line transferring the call. Can your system be configured to pass the Caller ID information of the original calling party through to the Centrex line to which the system transfers the call such that it will be displayed on the call recipient's industry standard Caller ID unit? | N | This is a Centrex limitation. ISDN could do this. |
| 26. Can your system associate nicknames to standard names without manual intervention from the caller? | Y | Predefined list of alternate name. Added diminutives to employee's individual entries (p.68 – V9 Admin Guide) |
| 27. Can your system accept and successfully process multiple pronunciations for first and/or last names? | Y | Yes, there is a master dictionary which contains over 1 Million phonetic pronunciations |
| 28. Does the proposed system require any post-installation "tuning?" If so, please propose and briefly describe any tuning process that is recommended to be undertaken after system installation, and the level of effort that will be required of VSU, if any. | Y | |
| 29. Can your system support hyphenated names without requiring any name modification or alias creation to handle the various ways to ask for a person with such a name? | N | See "Compound last names" p.69 – V9 Admin Guide |
| 30. Can your system provide an accurate response when presented with a name not included in the active database (e.g. state that the name can not be found and offer alternatives based on closest match to the requested name)? | N | See "Consecutive rejections" p.236 – V9 Admin Guide |
| 31. Can your system present the caller with options (additional field information) when multiple listings are found to help caller identify the correct listing? | Y | See "Homophone resolution method" p.234 – V9 Admin Guide |
| 32. Can your system incorporate text to speech (TTS) software that can automatically generate user names, system prompts, etc.? Please explain if and how you propose to use TTS to improve the overall quality or cost of the solution. | Y | When an entry is created, Standard TTS is generated (Enhanced TTS is optional) – add voice examples |
| 33. Does your system have a feature that would enable designated VSU personnel or their voiceover professionals to record directory names and system prompts to enhance the overall quality of the solution? Please explain the functionality and the process, indicating what level of involvement would be required of your firm, if any. | Y | Individual employees could use the name recorder p.194 and the system admin could use the prompt recorder to record prompts and greetings– V9 Admin Guide |
| 34. Can your system utilize a single database to operate the entire solution without having to subdivide the database? | Y | |
| 35. Does your system recognize more than one first name for each individual directory entry without the need to add additional names/fields to the directory database such as William could be requested as William, Willie, Will, Billy or Bill and only count as one name in the directory? | Y | We can have multiple first names per entry. We can either add these in automatically or they can be entered by the client |

| | | |
|--|---|--|
| 36. Does your system support Oracle? If so, please indicate the version. | Y | As long as it can do a .csv export. |
| 37. What database platforms does your system support? | Y | Microsoft Server Desktop Engine (SQL in redundant situation) |
| 38. Can the University staff update the system names database? | Y | Admin Profile must be defined for the determined staff (password protected) |
| 39. If the first phone number in a data record becomes deactivated, will your system provide the other alternatives listed within that record? Please explain how the proposed solution handles the delivery of information to callers when there are multiple valid informational fields in a record. | N | Will be transferred to whatever number is set as the default |
| 40. Have you provided descriptions of how various database changes are handled by the system, such as if the first phone number in a data record is disconnected and deleted, how the system deals with that change and what other manipulation of the data (if any) should be done in order for the system to continue to process that record correctly? | Y | Upon sync, it will add, delete or update any information if changes have been made |
| 41. Will the system accommodate multiple inquiries for telephone numbers so that the caller does not have to hang up and redial? | Y | |
| 42. Can the system be monitored remotely? | Y | Via PCAnywhere/VNC or using multiadmin option if purchased by VSU |
| 43. Can the directory listing be updated without interference in the operation of the system? Please describe if and how the proposed system allows updates to directory listings without dropping active calls, degrading call quality, decreasing capacity, etc. | Y | Update of the directory has no effect on incoming and current calls - we generate the grammars when the ports are not taking a call. |
| 44. Can the system be configured to only transfer calls on campus and then just read back any information regarding off campus numbers that may be requested from a record? | Y | Via audio-text entries |
| 45. Can you provide the number of records a 4-port, 8-port and 16-port system can support? | Y | Number of entries is not directly related to number of ports. SA – up to 25 000 entries |
| 46. Is your system expandable without a major upgrade should our record capacity exceed the current number of ports originally installed? Please provide the following for the proposed system for each potential incremental size, up to 16 ports and the maximum number of database records supported: # of ports, # of records, equipment to be removed, and equipment to be installed. | Y | Refer to SpeechAttendant Technical Specifications  Technical Specifications |
| 47. Is your system capable of supporting between 15,000 and 30,000 records? Please state the maximum number of records your system will support as proposed. | Y | SpeechAttendant supports up to 25,000 entries. Over 25,000, the solution would have to be a SpeechAttendant Large Enterprise Edition |
| 48. Can your system download data in Excel Format? Please describe all available formats and the processes by which they can be loaded into the system. | Y | |
| 49. Will your system interface with SCT Banner System? | Y | If it can do .csv exports |
| 50. Will the University be able to program IVR Unit for other applications? Please provide information regarding the flexibility of the proposed system for use for other applications and describe the design and development tools, user interfaces, etc. that are available for design and development of new applications. Indicate which are included in the price of the system as proposed and which are not. | N | |


B. Training

| | A | B |
|--|---|---|
| 1. Do you provide on site training as to the maintenance needed by daily support staff, operations of adds, changes, deletions, etc. for your system? | Y | Default training is done remotely. Onsite training is possible at an additional charge |
| 2. Do you provide technical support for questions regarding problems with adds, changes, deletions, etc. during standard business hours 8 a.m. to 5 p.m. ET? Please describe in detail your technical support plans and available options. | Y | Refer to SpeechCare documentation  Speechcare Enterprise |
| 3. Have you provided a preliminary training plan including your requirements with regard to on-site training on the proposed system? | Y | See Admin Agenda |


C. Security Features




| | A | B |
|---|---|--|
| 1. Can your system accept a touch tone keyed pin instead of a spoken pin? Please explain how flexible the system is with regard to defining acceptable modes of response for different prompts. | Y | Securing menus with PiN or voice biometrics p.77 – V9 Admin Guide |
| 2. Is your system password protected? | Y | Use of the SA computer is secured via the standard Logoff of Windows |
| 3. Have you provided a detailed description of the security features provided with the proposed solution? | Y | |

D. Reporting

| | A | B |
|---|---|--|
| 1. Can your system provide statistics on usage and performance in detail and summary form? Please provide details as to what statistics are available and how they are collected, stored and delivered, and provide samples of the reports available with the system as proposed. (Include in your Pricing Submittal all costs associated with all reporting capabilities.) | Y | Via the report generator p.214 – V9 Admin Guide |
| 2. Does processing of reports have an effect on the operation of the system? Please describe all reporting activities that may affect the system, including the exact impact of each on the system as proposed. | N | There is no impact |
| 3. Can customized reports be developed from the system? Please describe the interface proposed and provide screen prints. | N | S Via the report generator p.214 – V9 Admin Guide  Administration Guide |

E. Maintenance and Warranty

| | A | B |
|--|---|---|
| 1. Can your system be easily maintained by designated in-house VSU personnel concerning moves, adds, changes and deletions on an "as needed" manual basis? | Y | See "privileges and ownership" p.16 – V9 Admin Guide  Administration Guide |
| 2. Can your system be administered or maintained either locally or remotely (password protected) through the network? | Y | Via PCAnywhere or VNC or multi-admin option |
| 3. Does your system require downtime in order to make administrative changes or database modifications to the system? | N | |

| | | |
|--|---|--|
| 4. Do you provide maintenance and repair services that will replace the system in the case of a disaster within a 24-72 hour time frame? Please describe the services to be provided with the system as proposed. | Y | If hardware is defective it will be replaced if it was provided by Nuance. |
| 5. Do you have maintenance agreements available for the system after the warranty period has expired? Please describe all maintenance and repair services available, and indicate the combination of services you are proposing to be provided with the system as priced in the Pricing Submittal. | Y | - SpeechCare (Software) - DELL Warranty – 3 years (Hardware)  Dell Warranty |
| 6. Do you have a toll free number for assistance during warranty/maintenance period? Please indicate the hours of operation. | Y | - SpeechCare 8:00 to 5:00 - SpeechCare Premium 24/7 (30 minutes call back after hours) - 866 434 2564  Escalation Procedure |
| 7. Does the system automatically notify designated personnel of problems with the system as they occur, via telephone? Please describe available notification options/modes. | Y | If premium, the designated personnel is Nuance Customer Support Center and the notification is via Email |
| 8. Does your system include 1 year on-site warranty on any hardware/software provided by your company to complete the total operational system? Please provide a complete description of the warranty for each component of the system proposed. | Y | Dell Hardware – 3 years onsite SpeechAttendant – 1 year standard, remote |
| 9. Have you provided in the Pricing Submittal the cost of a post warranty maintenance agreement on an annual basis for the four (4) years beyond the initial one (1) year warranty period? | Y | See SpeechAttendant proposal for pricing options |
| 10. Will your helpdesk provide a telephonic response to all reported problems within 30 minutes of receiving such a call? | Y | Only if you opt for the SpeechCare Premium support |
| 11. Have you provided a list of specific equipment that should be held on site at VSU for maintenance reasons? | Y | See site prep document |
| 12. Have you provided documentation on the frequency and duration of any preventative maintenance required for the equipment for this system to remain fully operational at all times? | Y | Please refer to the SpeechCare documentation  Speechcare Enterprise |
| 13. Have you provided all procedures associated with receiving major and minor software updates for this system as they become available, and included the associated costs for all in the Pricing Submittal? | Y | Only if you opt for the SpeechCare Premium support |
| 14. Have you provided a plan for escalation of troubles and after hours contacts in case of an emergency? | Y | SpeechCare Premium and CSC Escalation (Customer Support Center) |
| 15. Have you provided a copy of, or link to, Mean Time Between Failure (MTBF) data for the proposed system? | | |

F. Implementation Plan

| | A | B |
|--|---|---|
| 1. Do you agree to deliver and install the proposed system within 30 days of the award of this contract at the price shown in the Pricing Submittal? | Y | Typical deployment is 6-8 weeks. See site prep for requirements on client's side. |



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|--|---|--|
| 2. If you will not agree to deliver and install the proposed system within 30 days of the award of this contract at the price shown in the Pricing Submittal, please indicate here the number of days in which you agree to deliver and install the proposed solution at the prices shown in the Pricing Submittal. | Y | Typical deployment 6-8 weeks |
| 3. Have you provided a detailed description of all requirements VSU must have in place prior to installation of the proposed system, including interfaces, telecommunications access, environmental conditions, clearances, etc.? | Y | See Site Prep document  Site Preparation Document |
| 4. Have you provided an Implementation Plan, including a detailed project plan showing in detail the various tasks, milestones, etc. required to implement the system proposed, including identification of the resources required, any associated durations, dependencies, etc.? This plan should clearly show any dependencies on VSU. | Y | Please refer to the Sample Project Plan Document  Sample Project Plan |

EXHIBIT B – MEAN TIME BETWEEN FAILURE

| MANUFACTURER | PRODUCT | MTBF |
|--------------|------------|---------------------------|
| Intel | D/41JCT-LS | 274,000 hours (estimated) |
| Intel | D/82JCT-U | 196,000 hours (estimated) |

Supplier shall provide manufacturer's publicly available Mean Time Between Failure (MTBF) data, if any, to VITA for all additional equipment offered under the Contract upon request.

Nuance/Seamless Mobility Solutions Speech Attendant Pricing

VITA Discount is 15% off MSRP

| Software | | MSRP |
|--------------------------|--|-----------|
| Code | Product | |
| Base Software | | |
| S-8130240 | SpeechAttendant™ System Software License (per port) | \$ 2,250 |
| S-8130290 | SpeechAttendant™ System Software License for XL Systems (per port) | \$ 2,880 |
| S-8130170 | SpeechAttendant™ Block of 100 Entries | \$ 560 |
| S-8130410 | SpeechAttendant™ Block of 500 Entries | \$ 2,100 |
| S-8130420 | SpeechAttendant™ Block of 2,500 Entries | \$ 9,000 |
| S-8130390 | SpeechAttendant™ Block of 10,000 Entries | \$ 24,300 |
| S-8130430 | SpeechAttendant™ Block of 25,000 Entries | \$ 54,000 |
| S-8130440 | SpeechAttendant™ Block of 50,000 Entries | \$ 91,800 |
| Optional Software | | |
| S-8600110 | SpeechAttendant™ Language, English/French | \$ 1,980 |
| S-8600130 | SpeechAttendant™ Language, English/Spanish | \$ 1,980 |
| S-8600310 | Speechify Enhanced Text to Speech Module - (English) | \$ 3,312 |
| S-8601310 | Speechify Enhanced Text to Speech Module - (French) | \$ 3,312 |
| S-8600150 | SpeechAttendant Interface™ supports LDAP, MAT/OTM, JD Edwards, Switchview | \$ 3,150 |
| S-8140980 | SpeechAttendant Redundant Server Software (per port) | \$ 2,250 |
| S-8140990 | SpeechAttendant XL Redundant Server Software (per port) | \$ 2,880 |
| S-8600430 | SpeechAttendant™ MultiAdmin for system administrators to manage system remotely (gives up to 5 concurrent access to the database) | \$ 4,500 |
| S-8600360 | SpeechAttendant™ SpeechContacts. 20 seat licenses for VAD menus, with 1500 phone numbers, protected with Speaker Verification, via Microsoft Outlook™ Interface. | \$ 4,500 |
| S-8600370 | SpeechAttendant™ SpeechAuthenticator. In blocks of 100 voice prints. | \$ 4,500 |

| Hardware & Services | | MSRP |
|--|---|-----------|
| Code | Product | |
| Implementation Services - Turnkey Solutions from ScanSoft | | |
| S-8400480 | ImplementationCare™ Services for SpeechAttendant™ System 4-6 Ports - Installation, Implementation and Training - Provided by ScanSoft and incl. T&L | \$ 6,667 |
| S-8400490 | ImplementationCare™ Services for SpeechAttendant™ System 8-10 Ports - Installation, Implementation and Training - Provided by ScanSoft and incl. T&L | \$ 9,334 |
| S-8400500 | ImplementationCare™ Services for SpeechAttendant™ System 12-16 ports - Installation, Implementation and Training - Provided by ScanSoft and incl. T&L | \$ 12,000 |
| S-8400510 | ImplementationCare™ Services for SpeechAttendant™ XL (7500-10,000 entries or >16 ports) - Installation, Implementation and Training - Provided by ScanSoft, incl. T&L | \$ 16,000 |
| S-8400520 | ImplementationCare™ Services for SpeechAttendant™ XL (10,001-15,000 entries) - Installation, Implementation and Training - Provided by ScanSoft, incl. T&L | \$ 18,667 |
| S-8400530 | ImplementationCare™ Services for SpeechAttendant™ XL (15,001-20,000 entries) - Installation, Implementation and Training - Provided by ScanSoft, incl. T&L | \$ 21,334 |
| S-8400540 | ImplementationCare™ Services for SpeechAttendant™ XL (20,001-25,000 entries) - Installation, Implementation and Training - Provided by ScanSoft, incl. T&L | \$ 24,000 |
| S-8400550 | ImplementationCare™ Services for SpeechAttendant™ XL (25,001-30,000 entries) - Installation, Implementation and Training - Provided by ScanSoft, incl. T&L | \$ 26,667 |
| S-8400040 | Additional ImplementationCare™ Services for SpeechAttendant™: per day, incl. T&L - Provided by ScanSoft | \$ 1,734 |
| S-8700100 | SpeechAttendant System Administrator Training Level 2 (1 day) - Provided by ScanSoft | \$ 1,734 |
| Implementation Services - Voice User Interface Design and Certification from ScanSoft | | |
| S-8400210 | ImplementationCare™ Services for SpeechAttendant™ System 4-6 Ports - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 2,667 |
| S-8400220 | ImplementationCare™ Services for SpeechAttendant™ System 8-10 Ports - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 3,734 |
| S-8400230 | ImplementationCare™ Services for SpeechAttendant™ System 12-16 ports - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 4,800 |
| S-8400240 | ImplementationCare™ Services for SpeechAttendant™ XL (7500-10,000 entries or >16 ports) - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 6,400 |

| Code | Product | MSRP |
|-----------|---|-----------|
| S-8400250 | ImplementationCare™ Services for SpeechAttendant™ XL (10,001-15,000 entries) - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 7,467 |
| S-8400260 | ImplementationCare™ Services for SpeechAttendant™ XL (15,001-20,000 entries) - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 8,534 |
| S-8400300 | ImplementationCare™ Services for SpeechAttendant™ XL (20,001-25,000 entries) - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 9,600 |
| S-8400310 | ImplementationCare™ Services for SpeechAttendant™ XL (25,001-30,000 entries) - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 10,667 |
| S-8400320 | Additional ImplementationCare™ Services for SpeechAttendant™: per day - Voice User Interface Design and Certification - Provided remotely by ScanSoft | \$ 1,734 |
| | SpeechAttendant™ Documentation | |
| S-8510300 | SpeechAttendant™ Administration Guide | \$ 40 |
| S-8510360 | SpeechAttendant™ Installation Guide | \$ 40 |
| | SpeechCare™ Services for SpeechAttendant™ | |
| S-8400880 | ScanSoft SpeechCare™ Services SpeechAttendant™ system (per port, per month) - For renewal adjustment purposes only | \$ 40 |
| S-8400900 | ScanSoft SpeechCare™ Services SpeechAttendant™ system (per port, per year) - Service Provided by ScanSoft | \$ 467 |
| S-8400920 | ScanSoft SpeechCare™ Services for SpeechAttendant™ system (2-year package, per port) | \$ 747 |
| S-8400720 | ScanSoft SpeechCare™ Services SpeechAttendant™ system (4-year package, per port) - Does not extend DELL server warranty | \$ 1,494 |
| S-8401120 | ScanSoft SpeechCare™ Premium Services SpeechAttendant™ system (per port, per year) - Service Provided by ScanSoft - Addition to Year 1 TotalCare Services | \$ 268 |
| S-8401190 | ScanSoft SpeechCare™ Premium Services SpeechAttendant™ system (per port, per year) - Service Provided by ScanSoft | \$ 735 |
| S-8401220 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ system (2-year package, per port) - Service Provided by ScanSoft | \$ 1,175 |
| S-8400750 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ system (4-year package, per port) - Does not extend DELL server warranty | \$ 2,350 |
| S-8400350 | SpeechCare Alarms Monitoring Service for SpeechAttendant (per port, per year) - Provided by ScanSoft | \$ 156 |
| | SpeechCare™ Services for SpeechAttendant™ XL | |
| S-8400890 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (less than 5000 entries) (per port, per month) - For adjustment purposes only | \$ 40 |
| S-8400910 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (less than 5000 entries) (per port, per year) - Service Provided by ScanSoft | \$ 467 |
| S-8400930 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (less than 5000 entries) (2-year package, per port) | \$ 747 |
| S-8400730 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (less than 5000 entries) (4-year package, per port) - Does not extend DELL server warranty | \$ 1,494 |
| S-8401890 | ScanSoft SpeechCare™ Premium Services SpeechAttendant™ XL system (less than 5000 entries) (per port, per year) - Service Provided by ScanSoft - Addition to Year 1 TotalCare Services | \$ 268 |
| S-8401210 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (less than 5000 entries) (per port, per year) - Service Provided by ScanSoft | \$ 735 |
| S-8401230 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (less than 5000 entries) (2-year package, per port) | \$ 1,175 |
| S-8400760 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (less than 5000 entries) (4-year package, per port) - Does not extend DELL server warranty | \$ 2,350 |
| S-8400950 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (5001-10000 entries) (per port, per month) - For adjustment purposes only | \$ 90 |
| S-8400960 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (5001-10000 entries) (per port, per year) - Service Provided by ScanSoft | \$ 1,067 |
| S-8400980 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (5001-10000 entries) (2-year package, per port) | \$ 1,708 |
| S-8400990 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (5001-10000 entries) (4-year package, per port) - Does not extend DELL server warranty | \$ 3,415 |
| S-8401000 | ScanSoft SpeechCare™ Premium Services SpeechAttendant™ XL system (5001-10000 entries) (per port, per year) - Service Provided by ScanSoft - Addition to Year 1 TotalCare Services | \$ 428 |
| S-8401010 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (5001-10000 entries) (per port, per year) - Service Provided by ScanSoft | \$ 1,495 |
| S-8401020 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (5001-10000 entries) (2-year package, per port) | \$ 2,391 |
| S-8401030 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (5001-10000 entries) (4-year package, per port) - Does not extend DELL server warranty | \$ 4,782 |
| S-8401040 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (10,001-30,000 entries) (per port, per month) - For adjustment purposes only | \$ 112 |
| S-8401050 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (10,001-30,000 entries) (per port, per year) - Service Provided by ScanSoft | \$ 1,334 |
| S-8401060 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (10,001-30,000 entries) (2-year package, per port) | \$ 2,134 |
| S-8401070 | ScanSoft SpeechCare™ Services for SpeechAttendant™ XL system (10,001-30,000 entries) (4-year package, per port) - Does not extend DELL server warranty | \$ 4,266 |
| S-8401080 | ScanSoft SpeechCare™ Premium Services SpeechAttendant™ XL system (10,001-30,000 entries) (per port, per year) - Service Provided by ScanSoft - Addition to Year 1 TotalCare Services | \$ 535 |
| S-8401090 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (10,001-30,000 entries) (per port, per year) - Service Provided by ScanSoft | \$ 1,867 |

| Code | Product | MSRP |
|-----------|---|------------|
| S-8401100 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (10,001-30,000 entries) (2-year package, per port) | \$ 2,987 |
| S-8401110 | ScanSoft SpeechCare™ Premium Services for SpeechAttendant™ XL system (10,001-30,000 entries) (4-year package, per port) - Does not extend DELL server warranty | \$ 5,974 |
| S-8400370 | SpeechCare Alarms Monitoring Service for SpeechAttendant XL (per port, per year) - Provided by ScanSoft | \$ 180 |
| S-8400340 | Other SpeechCare™ Services | |
| S-8400340 | ScanSoft™ Direct Services - Hourly Rate (minimum billed time: 1 hour) - Provided by ScanSoft | \$ 200 |
| S-8404050 | CallerCare Recordings | |
| S-8404050 | CallerCare Professional Name Recordings - Cost per name - For initial system recordings | 2.00 |
| S-8404060 | CallerCare Professional Prompt Recordings Service - Cost per prompt - For initial system recordings | 11.00 |
| S-8404100 | CallerCare Professional Recordings Service (1 recording session for 25 names) - For directory updates | 664 |
| S-8404110 | CallerCare Professional Recordings Service (1 recording session for 100 names) - For directory updates | 784 |
| S-8404120 | CallerCare Professional Recordings Service (1 recording session for 250 names) - For directory updates | 1,224 |
| S-8130230 | SpeechAttendant™ Upgrades Packages | |
| S-8130230 | SpeechAttendant™ software upgrade from V6.x to SpeechAttendant™ V8.x per port (hardware/implementation not included) | \$ 536 |
| S-8130190 | SpeechAttendant™ software upgrade from V5.x to SpeechAttendant™ V8.x per port (hardware/implementation not included) | \$ 848 |
| S-8130300 | SpeechAttendant™ Upgrade from SpeechAttendant™ 8.x to SpeechAttendant XL 8.x (per port) (hardware/implementation not included) | \$ 751 |
| S-8130600 | SpeechAttendant™ Lite 4-port upgrade package from V4.x or lower to SpeechAttendant™ Lite V8.x - Includes DELL Optiplex, 4-port Analog Integration to the PBX, Implementation and 1-year TotalCare Services. | \$ 10,000 |
| S-8130400 | SpeechAttendant™ 4-port upgrade package from V4.x or lower to SpeechAttendant™ V8.x - Includes DELL PowerEdge 2600, 4-port Digital Integration to the PBX, Implementation and 1-year TotalCare Services. | \$ 15,000 |
| S-8130500 | SpeechAttendant™ 8-port upgrade package from V4.x or lower to SpeechAttendant™ V8.x - Includes DELL PowerEdge 2600, 8-port Digital Integration to the PBX, Implementation and 1-year TotalCare Services. | \$ 20,000 |
| S-8130700 | 4 Port Upgrade Bundle for Liaison ver. 5.x to SpeechAttendant ver. 8 (Includes software upgrade, TotalCare for 1 year and implementation and update training) | \$ 8,457 |
| S-8130800 | 8 Port Upgrade Bundle for Liaison ver. 5.x to SpeechAttendant ver. 8 (Includes software upgrade, TotalCare for 1 year and implementation and update training) | \$ 14,914 |
| S-8130900 | 12 Port Upgrade Bundle for Liaison ver. 5.x to SpeechAttendant ver. 8 (Includes software upgrade, TotalCare for 1 year and implementation and update training) | \$ 21,370 |
| S-8130910 | D41JCT-LS - Discount (Valid with the purchase of a complete server) | \$ (667) |
| S-8130920 | Dialogic Card VTG PCI/8 (Valid with the purchase of a complete server) | \$ (1,334) |
| S-8130930 | Dialogic Card VTG PCI/12 (Valid with the purchase of a complete server) | \$ (1,600) |
| S-8700010 | SpeechFoundry Academy Training - on customer premises | |
| S-8700010 | Installing, Configuring & Supporting the SpeechAttendant™ System (4 days) Max 8 persons - Provided by ScanSoft | \$ 6,667 |
| S-8700040 | SpeechFoundry Academy Training - at ScanSoft | |
| S-8700040 | Installing, configuring, and supporting SpeechAttendant (4 days) (per participant) - Provided by ScanSoft | \$ 2,667 |
| S-8700200 | Installing, configuring, and supporting SpeechAttendant (4 days) Group Rate Max 8 persons - Provided by ScanSoft | \$ 6,667 |
| S-8140050 | SpeechAttendant™ Analog Hardware | |
| S-8140050 | 4-port PowerEdge 2600, Analog Hardware Platform | \$ 6,336 |
| S-8140060 | 8-port PowerEdge 2600, Analog Hardware Platform | \$ 7,932 |
| S-8140070 | 12-port PowerEdge 2600, Analog Hardware Platform | \$ 8,852 |
| S-8140080 | 16-port PowerEdge 2600, Analog Hardware Platform | \$ 10,496 |
| S-8140780 | 8-port PowerEdge 6600, Analog Hardware Platform | \$ 13,536 |
| S-8140790 | 12-port PowerEdge 6600, Analog Hardware Platform | \$ 17,695 |
| S-8140800 | 16-port PowerEdge 6600, Analog Hardware Platform | \$ 19,432 |
| S-8140810 | 24-port PowerEdge 6600 Analog Hardware Platform | \$ 33,715 |
| S-8140820 | 32-port PowerEdge 6600, Analog Hardware Platform | \$ 36,115 |
| S-8140950 | 48-port PowerEdge 8450, Analog Hardware Platform | \$ 71,552 |
| S-8141000 | SpeechAttendant™ Digital Hardware | |
| S-8141000 | Digital hardware for Mitel PBX | \$ - |
| S-8141010 | Digital hardware for Nortel PBX | \$ - |
| S-8141020 | Digital hardware for Avaya PBX | \$ - |
| S-8141030 | Digital hardware for NEC PBX | \$ - |
| S-8140650 | 4-port PowerEdge 2950, Digital Hardware Platform | \$ 9,372 |
| S-8140550 | 4-port PowerEdge 2600, Digital Hardware Platform | \$ 8,432 |
| S-8140560 | 8-port PowerEdge 2600, Digital Hardware Platform | \$ 10,028 |
| S-8140870 | 8-port PowerEdge 2950, Digital Hardware Platform | \$ 10,492 |
| S-8140570 | 12-port PowerEdge 2600, Digital Hardware Platform | \$ 11,268 |
| S-8140600 | 12-port PowerEdge 2950, Digital Hardware Platform | \$ 12,030 |
| S-8140580 | 16-port PowerEdge 2600, Digital Hardware Platform | \$ 13,232 |
| S-8140860 | 16-port PowerEdge 2950, Digital Hardware Platform | \$ 13,469 |
| S-8140880 | 8-port PowerEdge 6600, Digital Hardware Platform | \$ 15,632 |
| S-8140890 | 12-port PowerEdge 6600, Digital Hardware Platform | \$ 20,111 |
| S-8140900 | 16-port PowerEdge 6600, Digital Hardware Platform | \$ 22,168 |
| S-8140910 | 24-port PowerEdge 6600 Digital Hardware Platform | \$ 38,387 |
| S-8140920 | 32-port PowerEdge 6600, Digital Hardware Platform | \$ 41,427 |
| S-8140960 | 48-port PowerEdge 8450, Digital Hardware Platform | \$ 79,440 |
| S-8140830 | SpeechAttendant™ IP Hardware | |
| S-8140830 | 2-8 port PowerEdge 2600, IP Hardware Platform | \$ 5,996 |

| Code | Product | MSRP |
|-----------|--|-----------|
| S-8140680 | 2-8-port PowerEdge 2950, IP Hardware Platform | \$ 6,662 |
| S-8140840 | 10-16 port PowerEdge 2600, IP Hardware Platform | \$ 7,280 |
| S-8140850 | 24-port PowerEdge 6600, IP Hardware Platform | \$ 29,655 |
| | SpeechAttendant™ ISDN Hardware | |
| S-8140930 | 23-port PowerEdge 6600 ISDN PRI Hardware Platform | \$ 34,098 |
| S-8140940 | 36-port PowerEdge 6600 Fractional T1 Hardware Platform | \$ 39,280 |
| | DELL Warranty | |
| S-8400640 | Premium DELL Warranty (3 years: 4-hour response time) - Provided by DELL | \$ 1,188 |
| | Other Servers | |
| S-8141050 | Client-Provided Server - Compaq | \$ - |
| S-8141060 | Client-Provided Server - HP | \$ - |
| S-8141070 | Client-Provided Server - IBM | \$ - |
| S-8141080 | Client-Provided Server - Other | \$ - |
| | Other Hardware and Server Software™ | |
| S-8310070 | D120JCT-LS | \$ 2,600 |
| S-8610340 | D240JCT-T1 | \$ 4,702 |
| S-8610290 | D41-JCT-LS | \$ 1,214 |
| S-8610270 | D42 JCT | \$ 3,127 |
| S-8610280 | D82 JCT | \$ 3,872 |
| S-8610050 | Dialogic Card VTG PCI/12 | \$ 2,444 |
| S-8610060 | Dialogic Card VTG PCI/16 | \$ 2,791 |
| S-8610070 | Dialogic Card VTG PCI/8 | \$ 2,098 |
| S-8600230 | DTI ATA for Norstar Key Systems (per port) | \$ 287 |
| | Platform Certification for platforms other than DELL (3 days) | |
| S-8400660 | Excludes shipping and handling | \$ 6,667 |
| S-8400680 | Hardware package for customers supplying their own server (Key, Cables, Manuals) | \$ 651 |
| S-8610250 | Additional processor for the Dell PowerEdge 2600 platform | \$ 879 |
| S-8610350 | Additional processor for the Dell PowerEdge 6600 platform | \$ 2,634 |
| S-8610380 | Dual Network Interface Card | \$ 549 |
| S-8610450 | DELL PowerEdge Hard Drive (10,000+ RPM) | \$ 768 |
| S-8610510 | Symantec Anti-virus software License | \$ 122 |
| S-8610520 | Symantec PcAnywhere License | \$ 151 |
| S-8610530 | Windows 2000 Professional License | \$ 494 |
| S-8610540 | Windows 2000 Server License | \$ 1,317 |
| S-8610410 | Additional 256 MB of RAM for PE 2600 | \$ 330 |
| S-8610430 | Additional 512 MB of RAM for PE 2600 | \$ 604 |
| S-8610360 | Additional 1 GB of RAM for PE 2600 | \$ 1,115 |
| S-8610370 | Additional 1 GB of RAM for PE 6600 | \$ 1,115 |
| S-8600120 | RAID Standard Compliant Disk Mirroring Option for P/E 2600-2950 Platforms | \$ 1,300 |
| S-8600400 | RAID Standard Compliant Disk Mirroring Option for P/E 6600-6650 Platforms | \$ 988 |
| S-8600410 | Server Mounting Kit for PowerEdge 2600 | \$ 440 |
| S-8600640 | Server Mounting Kit for PowerEdge 2950 | \$ 330 |
| S-8600420 | Server Mounting Kit for PowerEdge 6600 | \$ 824 |
| S-8600510 | UPS Battery Unit for 1 PowerEdge 2600 (904 minutes) | \$ 6,098 |
| S-8600520 | UPS Battery Unit for 2 PowerEdge 2600 (674 minutes) | \$ 7,638 |
| S-8600540 | UPS Battery Unit for 1 PowerEdge 6600 (701 minutes) | \$ 6,098 |
| S-8600550 | UPS Battery Unit for 2 PowerEdge 6600 (538 minutes) | \$ 11,148 |
| S-8600320 | SpeechAttendant™ tape backup device (Dell DLT4000) | \$ 6,934 |
| D480 | JCT Telephony Board (Supports two T1/ISDN/PRI) | \$ 6,100 |

CONTRACT EXHIBIT D – WARRANTY AND MAINTENANCE PLAN TABLE

1. WARRANTY AND MAINTENANCE OFFERINGS FOR DELL PRODUCTS

| Service Offering Product Name | Standard Warranty (See Dell Hardware Service Agreement, attached hereto as Attachment 1, for detailed description.) |
|-------------------------------|--|
| Brief Description | Definition: Basic, brief description of service parameters provided by the service offering. Dell Hardware Service Agreement - Type 2 Service Agreement 4-Hour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays), provided the service location is between 0-125 miles from the nearest parts stocking location. |
| Coverage Period | Definition: Days and times during which Supplier shall answer or respond to Authorized User's calls or emails for warranty or maintenance services. Dell Hardware Service Agreement - Type 2 Service Agreement 4-Hour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays), provided the service location is between 0-125 miles from the nearest parts stocking location. |
| Response Time | Definition: Time within which Supplier shall respond to a request for warranty or maintenance services from an Authorized User. Note: Supplier shall be deemed to have received an Authorized User's request for warranty or maintenance services when Authorized User advises Supplier of its need via e-mail, web form submission, printer message or telephone call, provided such request is received during the Coverage Period. Dell Hardware Service Agreement - Type 2 Service Agreement 4-Hour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays), provided the service location is between 0-125 miles from the nearest parts stocking location. |
| | Remedy: For failure to meet the Response Time: See Dell Hardware Service Agreement, attached hereto as Attachment 1. |

VITA CONTRACT #VA-070307-SEAM – SEAMLESS MOBILITY SOLUTIONS, INC. – EXHIBIT D
WARRANTY AND MAINTENANCE PLAN TABLE

| | |
|------------------------------------|--|
| Remedial Maintenance (RM) | <p>Definition: Maintenance service (in accordance with the hardware manufacturer's recommended procedures for repair of the hardware) necessary to identify and repair hardware malfunctions in order to return the hardware to its original Operating Condition. Supplier agrees to utilize the most expeditious methods of restoring the hardware to its original Operating Condition, which may include part or whole unit replacement.</p> <p>Note: Calls dispatched outside the times specified by the warranty or maintenance level identified in the executed order referencing this Contract may be subject to Service Out-of-Scope charges. Warranty or maintenance services requested for a unit of hardware within the forty-eight (48) hour period immediately following RM performed on the same unit of hardware for the same problem, shall be provided at no charge.</p> |
| | <p>Dell Hardware Service Agreement - Type 2 Service Agreement</p> <p>4-Hour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays), provided the service location is between 0-125 miles from the nearest parts stocking location.</p> |
| Restore Time | <p>Definition: Time within which Supplier shall restore the hardware to its original operating condition</p> <p>Note: The level of severity (e.g., 1, 2, 3), shall be defined by the Authorized User.</p> |
| | <p>Dell Hardware Service Agreement - Type 2 Service Agreement</p> <p>4-Hour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays), provided the service location is between 0-125 miles from the nearest parts stocking location.</p> |
| | <p>Remedy: For failure to meet the Restore Time: See Dell Hardware Service Agreement, attached hereto as Attachment 1.</p> |
| Preventive Maintenance (PM) | <p>Definition: Action, including, but not limited to, inspecting, adjusting, and testing, furnished on a scheduled basis, to diagnose potential problems and ensure proper hardware operation, in accordance with the hardware manufacturer's recommended procedures.</p> <p>Note: Authorized User shall provide required access, subject to Authorized User's security regulations.</p> |
| | <p>Dell Hardware Service Agreement -- States that preventive maintenance is not included.</p> |
| | <p>Remedy: Not applicable.</p> |

2. WARRANTY AND MAINTENANCE OFFERINGS FOR SYSTEM SOFTWARE

| Service Offering | Standard Warranty (See SpeechCare Premium Edition description, attached hereto as Attachment 2, for detailed description.) |
|----------------------|---|
| New Releases | Definition: Copies of the System Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, and access modes, to the System Software made by Supplier or Software Manufacturer, including, without limitation, modifications to the System Software which can increase the speed, efficiency or base of operation of the System Software or add additional capabilities to or otherwise improve the functionality of the System Software. |
| | <p>SpeechCare Premium for SpeechAttendant – with your <i>Premium</i> service includes all major software releases. Additional hardware required and installation services are not included.</p> <p>We will also perform the following “Proactive Performance Monitoring.”</p> <ul style="list-style-type: none"> - Weekly Pronunciations Dictionary Update - Nuance will intervene if critical errors occur, including possible issues with the directory update process - Weekly performance reports - Monthly emails covering critical directory errors and recommendations - Monthly, you will be contacted if the call transfer rate falls below 90% - Quarterly, you will receive a report highlighting a sample of calls and recommendations on how to improve your system performance - Yearly, you will receive a detailed system evaluation and recommendations on how to improve your system performance. |
| Coverage | Definition: All reasonably necessary telephone or written consultation requested by Authorized Users in connection with use, problems and operation of the System Software. |
| | SpeechCare Premium for SpeechAttendant - Nuance will answer your support calls within 30 minutes 24 x 7 x 365 |
| Response Time | <p>Definition: Time period within which Supplier shall respond to a request for warranty or maintenance services from an Authorized User.</p> <p>Note: Supplier shall be deemed to have received an Authorized User's request for warranty or maintenance services when Authorized User advises Supplier of its need via e-mail, web form submission, printer message or telephone call, provided such request is received during the Coverage period.</p> |
| | SpeechCare Premium for SpeechAttendant - Nuance will answer your support calls within 30 minutes |

VITA CONTRACT #VA-070307-SEAM – SEAMLESS MOBILITY SOLUTIONS, INC. – EXHIBIT D
WARRANTY AND MAINTENANCE PLAN TABLE

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|---------------------|--|
| | Remedy: For failure to meet the Response Time: See SpeechCare Premium Edition description, attached hereto as Attachment 2. |
| Restore Time | Definition: Time period within which Supplier shall restore functioning of System Software. Note: The level of severity (e.g., 1, 2, 3), shall be defined by the Authorized Users. |
| | SpeechCare Premium for SpeechAttendant Offsite Backup – Weekly, Nuance will backup your system critical files to the Nuance corporate network, protecting you in case of a system failure |
| | Remedy: For failure to meet the Restore Time: See SpeechCare Premium Edition description, attached hereto as Attachment 2. |

THE OBLIGATIONS OF SUPPLIER UNDER THIS SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.



Services Contract - Terms and Conditions

Hardware Service Agreement

BY ACCEPTING THE SERVICES AND SUPPORT DESCRIBED ON YOUR INVOICE, YOU AGREE TO BE BOUND BY AND ACCEPT THE TERMS AND CONDITIONS HEREIN. THESE TERMS AND CONDITIONS (THE "AGREEMENT") WILL SUPPLEMENT THE TERMS AND CONDITIONS OF ANY APPLICABLE OVERRIDING SIGNED AGREEMENT BETWEEN YOU AND DELL (INCLUDING WITHOUT LIMITATION, DELL'S STANDARD KEY CUSTOMER PURCHASE AGREEMENT) OR, IN THE ABSENCE OF SUCH AN AGREEMENT, DELL'S STANDARD INVOICE TERMS AND CONDITIONS OF SALE (See <http://www.dell.com/policy/legal/termsofsale.htm>). THIS CONTRACT IS BETWEEN YOU AND THE DELL ENTITY ("DELL" OR "OUR") AS SPECIFIED IN THE AFOREMENTIONED SIGNED AGREEMENT OR DELL'S STANDARD INVOICE TERMS AND CONDITIONS. ALL CAPITALIZED TERMS AND CONDITIONS NOT DEFINED HEREIN SHALL HAVE THE MEANING SPECIFIED IN THE AFOREMENTIONED SIGNED AGREEMENT OR DELL'S STANDARD INVOICE TERMS AND CONDITIONS.

1. **Products Covered ("Covered Product"):** When we refer to "System(s)" in this Agreement, we mean Dell-branded hardware that is sold as new, in a standard configuration(s) at the time of purchase for the following equipment: Dell desktop and notebook computers, workstation computers, server systems, data storage units or certain Dell branded Peripherals as designated by Dell. Excluded from this agreement are software and any additional items sold through Dell's Software and Peripherals Division (formerly known as Dellware), Dell Gigabuy, Dell Factory Outlet, or integrated by Custom Factory Integration. The System covered under this Agreement is described in your invoice.

This Contract is valid on System(s) purchased in the United States only. The Services to be provided under this Agreement apply only to the United States. References to the United States include the continental United States, Alaska, and Hawaii.

2. **Scope of Services:**

- a. The service Type you have chosen is recorded on your invoice. PPM means the principal period of maintenance or the principal hours during which Services are rendered for a service level.

IF YOU HAVE A TYPE 1 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 1 Service Agreement. 4-Hour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch (during your Principal Period of Maintenance (PPM)), Monday through Friday 8:00 a.m. to 6:00 p.m., excluding regularly observed holidays. If the service technician is dispatched after 4:00 p.m. local time, the service technician may not arrive at your location until the following business day.

IF YOU HAVE A TYPE 2 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 2 Service Agreement. 4-Hour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays), provided the service location is between 0-125 miles from the nearest parts stocking location.

IF YOU HAVE A TYPE 3 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 3 Service Agreement. Next-Business-Day/ Next-Business-Day Replacement Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service on the next business day (during your PPM); Monday through Friday 8:00 a.m. to 6:00 p.m., excluding regularly observed holidays. If the service technician is dispatched for On-Site Service after 5:00 p.m. local time, the service technician may take an additional business day to arrive at your location.

IF YOU HAVE A TYPE 4 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

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Type 4 Service Agreement. 2-Hour Service. A service technician will, in most cases, be dispatched to arrive at your location for on-site service within two (2) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays).

IF YOU HAVE A TYPE 5 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 5 Service Agreement. 6-Hour Service. A service technician will, in most cases, be dispatched to arrive at your location for on-site service within two (2) hours and complete repair of your Dell-branded hardware product within six (6) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays).

IF YOU HAVE A TYPE 6 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 6 Service Agreement. Parts Only service agreement. Dell will provide on an exchange basis replacement parts for Dell systems covered under this Agreement when a part in a covered system requires replacement. Customer must report each instance of System failure to Dell technical support in advance to obtain Dell's concurrence that a part should be replaced and to have Dell ship the replacement part. Dell will ship parts using next-business-day delivery, shipping prepaid. Dell will include a prepaid shipping container with each part for Customer's use in returning the replaced part to Dell. Spare parts provided under this Agreement may be new, used or reconditioned. Dell may provide spare parts made by various manufacturers when supplying parts to Customer. This Parts only service does not cover damage due to external causes, including accident, problems with electrical power, servicing by untrained people or not in accordance with Dell's procedures, abuse and misuse.

IF YOU HAVE A TYPE 7 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 7 Service Agreement. Standard Return-For-Repair- "Mail-In" Service agreement. After it is determined that Your System (defined as a Dell notebook computer purchased in the United States only containing a processing unit (CPU) and Dell specified optional hardware products that were factory-installed in the notebook computer prior to delivery to you) requires "Mail-In" Service, a carrier will be dispatched to your site with proper packaging the same day if you call prior to 12:00 p.m. local time to pick up your system and return it to Dell with shipping charges prepaid. Your System will be repaired or replaced, and delivered to the carrier for return shipping to you using overnight delivery, generally within one (1) business day after receipt of the System at the repair facility. Standard overnight shipping charges for shipping your System in for repair and for shipping it back to you will be paid by Dell. If non-DELL options added to your System are found to be the cause of your reported problem, a service charge may be applied. Dell reserves the right to send you a whole replacement for the System or a replacement for portions of the System rather than repairing and returning the System that you sent for repair. All service parts removed from your System become Dell's property. You will be obligated to pay, at the current retail price(s), for any service parts you wish to retain.

IF YOU HAVE A TYPE 8 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 8 Service Agreement. Standard Return-For-Repair "Ship-Back" Service agreement. After it is determined that your System, (defined as a Dell desktop computer purchased in the United States only containing a processing unit (CPU) and Dell specified optional hardware products that were factory-installed in the System prior to delivery to you) requires "Ship-Back" Service, the Dell technician will work with you on the phone to determine the nearest carrier location. Prepaid packaging material will be dispatched to that carrier location, and ordinarily will arrive by 12:00 p.m. local time the following day if you call prior to 7:00 p.m. eastern standard time. You must then take your desktop System to the carrier location within the next 3 days after your call, package it in the material provided, and provide it to the carrier to be shipped via standard 3-5 day ground shipping to Dell's repair facility. **This procedure applies to the desktop unit only; do not attempt to ship back your monitor using this procedure.** This contract does not apply to systems returned to Dell's repair facility using procedures other than those set forth herein, and neither Dell nor the carrier can be responsible for damage caused during transit of the system to the carrier. Standard 3-5 day ground shipping charges for shipping your System in for repair and for shipping it back to you will be paid by Dell. Once your System arrives at the repair facility, Dell will repair or replace your system. Generally, you can expect your system to be returned to you 10-14 business days (excluding holidays) after you call Dell to report your problem and arrange for shipping of the prepaid packaging material. If non-DELL options added to your System are found to be the cause of your reported problem, a service charge may be applied. Dell reserves the right to send you a whole identical or comparable replacement for the System or a replacement for portions of the System rather than repairing and returning the System that you sent for repair. All service parts removed from your System become Dell's property. You will be obligated to pay, at the current retail price(s), for any service parts you wish to retain.

IF YOU HAVE A TYPE 9 AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

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Type 9 Service Agreement. 4-Hour Parts Only Service. If you follow these procedures, a replacement part will, in most cases, be dispatched to arrive at your location within four (4) hours after dispatch (during your Principal Period of Maintenance (PPM)), Monday through Friday, 8:00 a.m. to 6:00 p.m. excluding regularly observed holidays. If the replacement part is dispatched after 4:00 p.m. local time, the replacement part may not arrive at your location until the following business day. Customer must report each instance of System failure to Dell technical support in advance to obtain Dell's concurrence that a part should be replaced and to have Dell ship the replacement part. Dell will include a prepaid shipping container with each part for Customer's use in returning the replaced part to Dell.

IF YOU HAVE A TYPE 10 AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM: Type 10 Service Agreement. 4-Hour Part Only Service. If you follow these procedures, a replacement part will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch, twenty-four hours a day, seven (7) days a week (including holidays). Customer must report each instance of System failure to Dell technical support in advance to obtain Dell's concurrence that a part should be replaced and to have Dell ship the replacement part. Dell will include a prepaid shipping container with each part for Customer's use in returning the replaced part to Dell.

IF YOU HAVE A TYPE 11 AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM: Type 11 Service Agreement. Advanced Exchange Service agreement. If Dell has determined that your System has experienced a qualified failure, Dell will ship a replacement System to your location. If you call prior to 5:00 p.m. customer local time, in most cases the replacement System will be shipped the next business day. Upon receipt of the replacement System, you must return your defective System to Dell by taking the defective System to the designated carrier location within the next 3 days. You must package the defective System in the material provided with the replacement System, and ship the defective System to Dell's repair facility. **This procedure applies to modular Systems only (i.e. Software & Peripheral items such as projectors or printers); do not attempt to ship back your computer system or monitor using this procedure. When returning your System for replacement, do not send external parts (such as cords, cables, controls, or lense caps).** This contract does not apply to Systems returned to Dell's facility using procedures other than those set forth herein, and neither Dell nor the carrier can be responsible for damage caused during transit of the system to the carrier. Dell will pay standard shipping charges, for shipping your System in for replacement and for shipping a replacement System to you. Dell reserves the right to send you a whole identical or comparable replacement for the System. If your Type 11 Service covers a projector, you are obligated to return the projector bulb with the defective system. You will be obligated to pay, at the current retail price(s), if you retain the projector or the projector bulb. If the defective unit is not returned within ten (10) days, you agree to pay Dell for the replacement unit upon receipt of invoice. Failure to honor the invoice within ten (10) days after receipt will cause the cancellation of this Agreement and may result in other legal steps

IF YOU HAVE A TYPE 12 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 12 Service Agreement. Standard Return-For-Repair "Mail-In" Service agreement. After it is determined that Your System requires "Mail-In" Service, packaging, shipping instructions, and a pre-paid shipping waybill will ordinarily be dispatched to your site the next business day. Upon receipt of the shipping supplies, you must package the system in the material required and call the carrier designated on your shipping instructions to arrange a pickup time. The carrier will then pick up your system and return it to Dell with shipping charges prepaid. Your System will be repaired or replaced, and delivered to the carrier for return shipping to you using second business day delivery, generally within one (1) business day (excluding holidays) after receipt of the System at the repair facility. Standard shipping charges, for shipping your System in for repair and for shipping it back to you, will be paid by Dell. If non-DELL options added to your System are found to be the cause of your reported problem, a service charge may be applied. Dell reserves the right to send you a whole replacement for the System or a replacement for portions of the System rather than repairing and returning the System that you sent for repair. All service parts removed from your System become Dell's property. You will be obligated to pay, at the current retail price(s), for any service parts you wish to retain.

IF YOU HAVE A TYPE 13 SERVICE AGREEMENT, THEN THE FOLLOWING SECTION APPLIES TO YOUR SYSTEM:

Type 13 Service Agreement. 8-Hour Service. If you follow these procedures and your service location is between 126-200 miles from the nearest parts stocking location, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within eight (8) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays).

- b. Limits of Support Services THIS AGREEMENT IS OF LIMITED DURATION AND COVERAGE. This Agreement extends only to original purchasers of the System located within the United States as determined by Dell, and to any person who buys the System and this Agreement from the original purchaser or a subsequent transferee, as long as all transfer procedures have been complied with. This Agreement extends only to uses for which the

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System was designed. Except as stated below, the services Dell agrees to provide under this Agreement are repair services that are necessary because of any existing defect or a defect occurs in materials or workmanship in the System or in any System component covered by this Agreement. Preventive maintenance is not included. Installation, de-installation, or relocation services and operating supplies are not included. **Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included.** Dell is not obligated to repair any System or System component which has been damaged as a result of: (i) accident, misuse, or abuse of the System or component (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives), (ii) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes, or (iii) the moving of the System from one geographic location to another or from one entity to another.

LIMITATION OF REMEDY. YOUR EXCLUSIVE REMEDY AND DELL'S ENTIRE, COLLECTIVE LIABILITY IN CONTRACT, TORT OR OTHERWISE, UNDER THIS AGREEMENT IS THE REPAIR OF THE DEFECTIVE SYSTEM OR COMPONENTS IN ACCORDANCE WITH THIS AGREEMENT. IF DELL IS UNABLE TO MAKE SUCH REPAIR, YOUR EXCLUSIVE REMEDY AND DELL'S ENTIRE LIABILITY WILL BE THE PAYMENT OF ACTUAL DAMAGES NOT TO EXCEED THE CHARGE PAID BY YOU OR, IF NO CHARGE WAS PAID, THE THEN-CURRENT PUBLISHED CHARGES FOR THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL

DELL BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, EXPENSES, COST, PROFITS, LOST SAVINGS OR EARNINGS, LOST OR CORRUPTED DATA, OR OTHER LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR OUT OF THE INSTALLATION, DEINSTALLATION, USE OF, OR INABILITY TO USE THE SYSTEM, OR OUT OF THE USE OF ANY SERVICE MATERIALS PROVIDED HEREUNDER.

THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF (i) INCIDENTAL OR CONSEQUENTIAL DAMAGES OR (ii) IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY.

Neither Dell nor you may institute any action in any form arising out of this Agreement more than eighteen (18) months after the cause of action has arisen, or in the case of nonpayment, more than eighteen (18) months from the date of last payment.

With regard to any services that are not within the coverage of this Agreement, it will be within Dell's discretion whether to perform the services, and, if Dell elects to perform the services, the services will be subject to an additional charge to be paid by you.

3. Your Responsibilities.

To receive service and support, you are responsible for complying with the following:

- a. **Valid Service Contract:** Dell must have received payment for Support within 30 days of the date of invoice. Customer shall pay an additional fee of 1.5% per month for invoices not paid within such 30-day period. If you are currently not entitled to Support, then you should submit a valid credit card number to purchase appropriate Support for the Covered Product.
- b. **Prepare for the Call.** You will help the technician serve you better if you have the following information and materials ready when you call: your System's invoice and serial numbers; service tag number; model and model numbers; the current version of the operating system you are using; and the brand names and models of any peripheral devices (such as a modem) you are using.
- c. **Call For Assistance.** For service support call one of the following toll free numbers based on your type of business. These phone lines are answered twenty-four (24) hours a day, seven days a week, including regularly observed holidays:

For Small Businesses:

Technical Support & Customer Service

800-456-3355

For National Accounts, Medical Institutions, Value Added Resellers (VARs):

Technical Support & Customer Service

800-822-8965

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For Government Agencies (local, state, or federal), or Educational Institutions:

Technical Support & Customer Service

800-234-1490

- d. Explain Your Problem to the Technician. Now you are ready to describe the problem you are having with your System. Let the technician know what error message you are getting and when it occurs; what you were doing when the error occurred; and what steps you may have already taken to solve the problem.
- e. Cooperate with the technician. Experience shows that most System problems and errors can be corrected over the phone as a result of close cooperation between the user and the technician. Listen carefully to the technician and follow the technician's directions.
- f. If the technician is unable to resolve the problem over the phone and determines that Mail-In or Ship Back Service is necessary, the following Standard procedures apply. Dell regrets that it cannot accept Systems that are not returned in accordance with these shipping instructions:
 - 1). Software/Data Backup. You understand and agree that we are not responsible for any loss of software or data. You should back up the software and data on your System's hard disk drive and on any other storage device(s) in the System.
 - 2). Display the Return Authorization Number. Please print the authorization number you obtain from the technician clearly and conspicuously on the outside of the prepaid packaging. Unfortunately, Dell will have to refuse to service, and will return to you, any System that does not clearly and conspicuously display the authorization number on the packaging.
 - 3). Explain the Problem in Writing. Please enclose a brief description of the problem encountered, the error message received, and the suspected defect you discussed with the technician over the phone.
 - 4). Shipping. Following the problem diagnosis, if you call during our carrier's regular business hours, the technician will transfer you to Dell's designated freight carrier, explain the situation to the carrier and turn any further shipping actions over to the carrier. If you call outside of our carrier's regular business hours, we will provide you with information to contact our carrier during their regular business hours. Jointly you and the carrier will arrange for shipping. The System must be shipped in the Dell provided packaging to the address given to you by the technician.
 - 5). Package Your System. Dell will provide packaging through our Freight Carrier. You will be responsible for ensuring that the System is properly packaged and you will bear the full risk of loss or damage for any System that is returned improperly packaged.
 - 6). Other Shipping Precautions. Do not send your manuals or any non-Dell supplied options with your System. Prior to shipping, you must remove the options and components from your System as instructed by the technician.
 - 7). If You Miss The Carrier Visit (Type 7- Mail-In Service). If you or your authorized representative is not at the location when the carrier arrives, he or she will leave a delivery attempt notice and will attempt redelivery. If you and the carrier are unable to coordinate the drop off, you will need to call Dell and schedule another carrier visit and you may be subject to an additional charge.
 - 8). If You Fail to Pick up the Prepaid Packaging Materials and Ship your System (Type 8 – Ship Back Service). If you fail to pick up the prepaid packaging materials and ship your System within 3 days of your call, you will need to call Dell and schedule another drop-off and you may be subject to an additional charge.
- g. Parts Only Agreement Payment Procedure. If you elect not to receive Mail-In or Ship Back services you may receive Dell's Parts Only Replacement Procedure (Type 6). Customer will pay Dell for replacement parts when the replaced part isn't returned to Dell within 15 days of the date the replacement was shipped by Dell, and for parts used to repair systems not covered by this Agreement. Parts will be priced at Dell's then-current standard prices. If a payment due from Customer is late and not because it is disputed in good faith, Dell may, in its discretion, refuse to ship parts or respond to technical and support inquiries until the late payment is made.

UNTIL YOU HAVE COMPLIED WITH THE ABOVE PROCEDURES, DELL CANNOT DISPATCH A SERVICE TECHNICIAN TO PERFORM ON-SITE REPAIRS.

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The hours of Support shall not include regular holidays that include New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day, and the day after Thanksgiving and Christmas Day. Dell is not liable for any failure or delay in performance due to any cause beyond its control. IN any event, if Dell's ability to render support services is impaired by circumstances beyond Dell's control, Dell may terminate this Contract, in any event, you will receive a refund for any unused portion of your service term for which you had paid.

4. General Terms:

- a. **Term and Renewal:** Prior to the expiration of your service contract, you may upgrade your service level or extend your service period based on available options then in effect. Any upgrades will not apply to conditions pre-existing the effective date of the upgrade.
- b. **Claims of Confidentiality or Proprietary Rights:** You agree that any information or data disclosed or sent to Dell, over the telephone, electronically or otherwise, is not confidential or proprietary to you.
- c. **Cancellation:** You may cancel this Agreement by providing to Dell at least thirty (30) days written notice of your decision to cancel. Dell will issue a refund to you for any unused portion of the service term for which you have paid. If more than thirty (30) days have transpired for the current contract year, then a refund will not be paid for that current contract year.
- d. **Entire Agreement:** This Contract is the entire agreement between you and Dell with respect to its subject matter and none of Dell's employees or agents may orally vary the terms and conditions of this Contract.
- e. **Assignment:** Dell reserves the right to assign its right and obligations under this Agreement to a qualified third party designated by Dell without notice to You. In the event of such an assignment, Dell will no longer be responsible for any performance obligations under this Agreement or any other liability associated with this Agreement.
- f. **Warranty Exclusion:** Dell makes no warranty, either express or implied, including, but not limited to, any implied warranties of merchantability and fitness for a particular purpose. Dell expressly disclaims all warranties.

5. **Customer Replaceable Units and Whole Unit Replacement.** If the telephone technician determines that the defective unit is one that is easily disconnected and reconnected, such as a keyboard, monitor, hard drives in portable computers, or any other component designated from time to time as a component that may be replaced by the customer, you may receive such component to install without a service technician arriving on site. Also, if the telephone technician determines that the System is one that should be replaced as a whole unit, a whole replacement unit with a prepaid return mailing label for the defective return may be sent directly to you. If a service technician delivers the replacement unit to you in person, you must relinquish the defective unit to the service technician. If you do not relinquish the defective unit to the service technician as required above, or if (in the event the replacement unit was not delivered in person by a service technician) the defective unit is not returned within ten (10) days, you agree to pay Dell for the replacement unit upon receipt of invoice. Failure to honor the invoice within ten (10) days after receipt will cause the cancellation of this Agreement and may result in other legal steps.

6. **Parts Ownership.** All service parts removed from your System become the property of Dell. You will be obligated to pay at the current retail price(s) for any service parts removed from your System and retained by you. Dell uses new and reconditioned parts made by various manufacturers in performing warranty repairs.

7. **Parts Stocked.** Based on our experience, we have stocked parts in various locations throughout the United States and other regions of the world. Selected parts may not be stocked in the location closest to your site. If a part that is needed to repair your System has to come from another location, it will be shipped using overnight delivery.

8. **Transfer of this Agreement.** Subject to the limitations set forth in this Agreement, you may transfer this Agreement to anyone who buys your entire System before the Termination Date of this Agreement, provided you are the original purchaser of the System and this Agreement, or you have purchased the System and this Agreement from its original owner (or a previous transferee) and have complied with all the transfer rules in this Agreement.

Please note that if you move your System to a geographic location in which the Service coverage is not available at the same price as you paid for this Agreement, you may incur an additional charge to maintain the same categories of Service coverage at the new location. If you choose not to pay such additional charge, your Service may be automatically changed to categories of Service that are available at such price or a lesser price in such new location with no refund available. Additionally, if (i) you transfer your Agreement to a buyer who will move the System to a geographic location in which the Service coverage is not available at the same price as you paid for this Agreement,

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or (ii) if the transferee (i.e., the buyer) of this Agreement wishes to change the Service coverage, then you may incur an additional charge for such transfer fee discussed above.

TO TRANSFER THIS SERVICE AGREEMENT:

- **Using the Internet:**

Complete the On-line Transfer Form located within Dell's Service and Support section at:
http://support.dell.com/us/en/emaildell/cc_opt09.asp

- **Questions in regards to an ownership transfer:**

Call (800) 822-8965 for:
Small Business

Medium & Large Business Internet Service Providers

OR

Call (800) 234-1490 for:
State & Local Government
Federal Government
Education
Healthcare

auto attendant solutions from Nuance

The experience speaks for itself™



SpeechCare® :: Premium Edition

Optimizing the performance of your SpeechAttendant®

Nuance has a passion for customer service. Following the successful deployment of your SpeechAttendant application, Nuance commits to providing your organization with the highest level of customer support in our industry. Through our various support program offerings, our team of dedicated and experienced professionals will ensure that your system performs at its optimum level.

Speechcare Premium Support Program Includes:

proactive support

Nuance's customer service center will proactively monitor key areas of your system to ensure it is constantly performing at peak levels. Proactive services include:

- **Non-Stop Service Coverage:** wherever you are in North America, Nuance will answer your support requests within 30 minutes
 - Monday to Friday: 8:00 AM to 5:00 PM local time
 - 24 x 7, 30-minute call back service for emergencies
- **Weekly Pronunciations Dictionary Update:** On a weekly basis, this automated process adds pronunciations for new names added to your directory for optimal performance.
- **Proactive Performance Monitoring includes:** includes:
 - Performance reports
 - Nuance will intervene if critical errors occur, including possible issues with the directory update process
 - Weekly performance reports sent via email outlining number of calls received, transfer success rates, and other relevant data regarding the performance of your system.
 - Monthly emails covering critical directory errors and recommendations for improvement
 - Monthly, you will be contacted if the call transfer rate falls below 90%
 - Quarterly, you will receive a report including recommendations on how to improve your system performance
 - Yearly, you will receive a detailed system evaluation and recommendations on how to improve your system performance.
- **On-going ProNames™ Subscription Service:** Weekly, if you have already purchased initial professionally recorded names for your system, this service will automatically add missing name recordings for up to 20% of your current directory size.
- **Offsite Backup:** Weekly, Nuance will backup your system critical files to the Nuance corporate network, protecting you in case of a system failure



on-demand services

In addition to the above mentioned pro-active services and included with your SpeechCare coverage, Nuance will provide you the following list of additional services at your request. All you need to do is call us.

- **Major Software Version Upgrades:** Your Premium service includes major software releases. Additional hardware required and installation services are not included.
- **Professional Voice User Interface Recordings:** If you have already purchased initial professionally recorded greetings and/or prompts for your system, Nuance will record up to 50 new system greetings and/or prompts using Nuance professional voice talent. Maximum of 6 requests per year.
- **Extended Software version updates:** Nuance will support you in installing software updates to your system during and/or outside normal business hours.
- **Voice Board Replacement:** In case of failure, Nuance will replace your voice board provided the boards were originally purchased from Nuance.

on-going training and development

Nuance wants to ensure that you are up to speed with the latest information about SpeechAttendant and how to best maximize its wide range of available features. You will benefit from the following educational offers:

- **Personalized Training:** In addition to the above training and as part of our Premium service offering, Nuance offers informal web based tutorials. You will be eligible for up to three of these individual training sessions per year.
- **Web-based training:** Nuance offers web-based training for you or your staff in order for you to receive the latest tips, hints and best practices in using SpeechAttendant. Your Premium service gives you an unlimited number of seats for these sessions.

- **Web Site Trouble Ticketing:** Open and track trouble tickets using the web.
- **SpeechCare Bulletin:** Quarterly, you will receive technical information pertaining to updated features, upcoming product versions and the upcoming web training schedule.

optional support services

Nuance offers additional fee-based services to expand your system maintenance and functionality.

- **Service Packs:** Whether it is installing new software releases, configuring new scripts in your application, or moving the equipment to new locations, Nuance's professional services team can customize a service to meet your needs.

customer care requirements for the Premium Speechcare Program

SpeechCare Services are achieved through the SpeechMonitor utility. SpeechMonitor (included with the SpeechCare program) is an automated maintenance utility that helps keep your SpeechAttendant working at peak levels with little human involvement. SpeechMonitor works 24 hours a day, proactively identify issues, improving administrator productivity and reducing the costs associated of maintaining your system.

For complete detail or more information, please contact:
speechattendant.sales@nuance.com or call
888-465-6287/514-954-3804 and say "sales department."

about Nuance Communications

Nuance is the leading provider of speech and imaging solutions for businesses and consumers around the world. Its technologies, applications, and services make the user experience more compelling by transforming the way people interact with information and how they create, share, and use documents. Every day, millions of users and thousands of businesses experience Nuance's proven applications and professional services. For more information, please visit www.nuance.com.

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Welcome to Nuance Technical Support

Your auto attendant system is ready to be transitioned to the production phase and this document will give you some key information on requesting support and escalating any issues.

Contacting the Customer Service Center

Customer satisfaction is important to us. Thus, for your convenience, we have three primary vectors for reaching the technical support team:

Email

SpeechAttendant.Support@Nuance.com

NOTE: This method should not be used for urgent and critical issues. The expected response time is within 1 business day.

Telephone

866-434-2564 (514-390-3922)

Open from 8:00 AM to 5:00 PM local time, Monday to Friday (excluding holidays).

Calls are routed to a queue and transferred to the first available technician.

NOTE: SpeechCare Premium and SpeechCare SA-LEE clients have 24 hour, 7 day support available via return call within 30 minutes. The phone system will route calls to a messaging service which will escalate urgent issues to a technician.

Web

<http://developer.scansoft.com>

The website allows you to open and track all incidents logged for your company.

NOTE: You must request access via email or phone to activate this functionality.

Escalation Path

Occasionally, you may have an issue that warrants escalation to Operations management or Engineering. Our technicians have access to multiple resources to ensure a timely solution to your issue.

If you feel that we can do more to resolve your issue, please feel free to escalate to Operations management.





How to reach Operations management directly

Manager, Technical Services

Eric Jacques, Eric.Jacques@Nuance.com
Phone : 888-465-6287 (514-904.7800)

Director of Operations

Rudy Bazelmans, Rudy.Bazelmans@Nuance.com
Phone: 888-465-6287 (514-904.7800)

SUPPLIER CONTRACT ADDENDUM

The Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Nuance Communications, Inc ("Supplier"), a business incorporated in Delaware, F.E.I.N. 94-3156479, having its principal place of business at One Wayside Road, Burlington MA 01803, are this day entering into a contract and, for their mutual convenience, the parties are using the standard form contract ("Nuance SpeechAttendant System Purchase Agreement") provided by Supplier. This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier's standard form contract and together shall govern the use of any and all Nuance Software licensed by the Commonwealth under this agreement whether or not specifically referenced in the order document.

Supplier represents and warrants that it is a corporation authorized to do in Virginia the business provided for in this contract.

This contract is executed by VITA on behalf of all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia, and hereinafter referred to as "Authorized Users." As used herein, the term "EULA" (end user licensing agreement) shall mean the Supplier's standard form contract, as found in Attachment A to this addendum, and any and all exhibits and attachments thereto. The term(s) "Customer," "You," and/or "you," as used in the EULA, shall mean the Commonwealth or any Authorized User and its officers, directors, agents and employees.

Supplier's standard form contract is, with the exceptions noted herein, acceptable to VITA. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard form contract cannot be accepted by VITA, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Supplier's standard form contract, none of the following shall have any effect or be enforceable against the Commonwealth or any Authorized User, its officers, employees or agents:

- i). Requiring or stating that the terms of the attached Supplier's standard form contract shall prevail over the terms of this addendum in the event of conflict;
- ii). Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing this contract or requiring or permitting that any dispute under this contract be resolved in any court other than a circuit court of the Commonwealth of Virginia;
- iii). Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term;
- iv). Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of VITA before the contract is considered in effect;
- v). Delaying the acceptance of this contract or its effective date beyond the date of execution;
- vi). Requiring any total or partial compensation or payment for lost profit or liquidated damages by VITA or any Authorized User, its officers, employees or agents if the contract is terminated before its ordinary period. In the event software licenses are purchased by an Authorized User directly from Supplier, license fees are non-cancelable and non-refundable except if this contract or the Authorized User's order is terminated due to Supplier's violation of 31 USC 1352, or if federal funds are used, directly or indirectly, to license Supplier's software or purchase Supplier's services and Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs;
- vii). Permitting termination by Supplier of the contract or the licenses granted hereunder, or permitting suspension of services by Supplier, except as follows: Supplier may terminate a license or suspend services to an Authorized User in the event of a material breach, provided:
 - (i) if disputed by VITA, or the Authorized User, the outcome of any dispute resolution

procedure, in accordance with §2.2-4363 et seq. of the Code of Virginia, is a determination that a material breach has occurred; (ii) Supplier provides Authorized User a thirty (30) day written notice with an opportunity to cure such material breach, if such breach is capable of cure; and (iii) the license termination applies only to the Authorized User which is responsible for the material breach. In addition, a license may be terminated if an Authorized User is found by a court of competent jurisdiction to have committed a material breach which remains uncured, if such breach is capable of cure. In such case, the license termination shall apply only to the Authorized User which is responsible for the material breach. Supplier may suspend services with respect to any license terminated as provided herein or due to non-payment by the Authorized User.

- viii). Defining "perpetual" license rights to have any meaning other than license rights that exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the contract;
- ix). Permitting unilateral modification of this contract by Supplier;
- x). Permitting modification or replacement of the EULA pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance. If Supplier provides to any Authorized User an update or upgrade subject to additional payment, such Authorized User shall have the right to reject such update or upgrade; provided, however, if VITA orders maintenance and support, Nuance shall only be obligated to provide such maintenance and support for the current release of the Nuance Software and the 2 immediate prior releases of the Nuance Software;
- xi). Imposing interest charges contrary to that specified by §2.2-4347 et seq. of the Code of Virginia;
- xii). Requiring VITA or any Authorized User to maintain any type of insurance either for such Authorized User's benefit or for Supplier's benefit;
- xiii). Granting Supplier a security interest in property of VITA or any Authorized User, its officers, employees or agents;
- xiv). Requiring VITA or any Authorized User, its officers, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
- xv). Establishing a presumption of severe or irreparable harm to Supplier by the actions or inactions of VITA or any Authorized User;
- xvi). Limiting or adding to the time period within which claims can be made or actions can be brought;
- xvii). Permitting Supplier to settle any Claim without the written consent of VITA and/or the Authorized User if such settlement (a) contains an admission of liability or wrongdoing by VITA or any Authorized User; (b) does not include a release of all covered claims pending against VITA and all Authorized Users; or (c) imposes upon VITA or any Authorized User any material obligations other than an obligation to stop using any infringing items;
- xviii). Binding VITA or any Authorized User, its officers, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
- xix). Obliging VITA or any Authorized User, its officers, employees or agents to pay costs of collection or attorney's fees;
- xx). Limiting the liability of Supplier for property damage or personal injury;
- xxi). Requiring any dispute resolution procedure(s) other than those in accordance with §2.2-4363 et seq. of the Code of Virginia;
- xxii). Prohibiting VITA from assigning to any entity this contract, or prohibiting an Authorized User from transferring or assigning a license pursuant to actions by the General Assembly transferring or reassigning such Authorized User's responsibilities;

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- xxiii). Permitting Supplier to assign, subcontract, delegate or otherwise convey the EULA and this Amendment, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA except as follows: Supplier may assign all or any of its rights and obligations to a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees to be bound by the terms and conditions set forth in the contract, or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;
- xxiv). Supplier shall have the right to conduct an audit of Authorized User's books and records to confirm compliance with the terms of this Agreement; provided however that such audit: (a) is conducted following thirty (30) days written notice; (b) is begun and concluded with reasonable diligence not to exceed thirty (30) days; (c) is conducted by an independent certified public accountant ("Auditor") mutually acceptable by the parties who shall be bound by all necessary confidentiality provisions to protect any and all data which may be encountered by Auditor in the conduct of the audit; (d) is conducted during Authorized User's normal business hours and shall not unreasonably interfere with Authorized User's business activities; (e) is conducted at Supplier's expense; (f) may be conducted no more than once per twelve (12) month period; and (g) shall be limited to an examination of records relating to activity in the most recent twelve (12) month period. Authorized User agrees to cooperate with Supplier in the conduct of such audit. In the event such audit discloses an underpayment, Authorized User shall pay Supplier the amount of such underpayment within thirty (30) days of demand, as evidenced by an invoice to Authorized User. Under no circumstances shall Supplier or Auditor access data or information of the Authorized User other than that which is subject to the audit. Deliberate or negligent access by Supplier or Auditor to any other such Authorized User data or information shall constitute a breach by Supplier of this contract. If Supplier or Auditor inadvertently and without negligence accesses such data or information, the terms and conditions of the confidentiality provisions of the contract shall apply with respect to Supplier and the terms of the confidentiality provisions to which Auditor is bound shall apply with respect to Auditor. Within a reasonable period after completion of an audit, Supplier shall provide Authorized User with a copy of the findings of such audit in the form of a written report. Authorized User shall have sixty (60) days to review such report and, if it does not agree with Supplier's findings, to submit a response. Supplier shall have thirty (30) days to review its records and either agree or disagree, in writing, with Authorized User's response. Should Supplier disagree, such dispute shall be settled in accordance with the §2.2-4363 of the Code of Virginia.
- xxv). Permitting Supplier to access any Commonwealth records or data, except as permitted in item (xxiv) above or pursuant to court order;
- xxvi). Permitting Supplier to use any information provided by the Commonwealth except for Supplier's own internal administrative purposes;
- xxvii). Requiring VITA or any Authorized User to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury;
- xxviii). Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia;
- xxix). Requiring that the terms and conditions of the contract or this addendum be kept confidential;
- xxx). Requiring VITA or any Authorized User to agree to additional terms and conditions for third party software unless such terms and conditions have been reviewed and accepted by VITA or its Authorized User; should Supplier be required to pass down any such terms and conditions to VITA or any Authorized User, Supplier must submit written notice to VITA in advance of fulfilling an order for any third party software subject to such terms and conditions. Notwithstanding the foregoing, VITA and its Authorized Users acknowledge and agree that use of any third party software provided by Supplier under the standard form contract shall be used solely with the Nuance Software under the terms of the standard form contract and may not otherwise be used for any other purpose; and

- xxxi). Requiring that VITA or any Authorized User purchase Software or Equipment from Supplier.

The parties further agree as follows:

- i). The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:
<http://www.vita.virginia.gov/procurement/documents/StatutorilyMandatedTsandCs.pdf>
- ii). The terms and conditions in documents posted to the afore referenced URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically.
- iii). The contractual claims provision §2.2-4363 of the Code of Virginia is also incorporated by reference.
- iv). The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this contract only to the extent required by §59.1-501.15 of the Code of Virginia.
- v). Supplier shall comply with all applicable federal, state, and local laws, regulations, and ordinances.
- vi). The Commonwealth does not waive its sovereign immunity or its immunity under the Eleventh Amendment.
- vii). The Commonwealth is tax exempt and shall not be responsible for payment of taxes, duties, or penalties.
- viii). Supplier warrants that it is the owner of the Software or otherwise, and that to the best of Supplier's knowledge, has the right to grant to all Authorized Users the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, trademark, United States patent, or trade secret of any third party. Notwithstanding anything to the contrary, VITA and its Authorized Users' sole and exclusive remedy for breach of the foregoing warranty shall be the indemnity provided in (ix) below.
- ix). Should Supplier or its personnel, Auditor, or agents enter the premises of VITA or any Authorized User in order to perform any services or to exercise any other rights and responsibilities under this contract, Supplier shall have unlimited liability for any bodily injury, death, or damage to real or tangible property caused by the intentional or willful misconduct or negligence of any such personnel, Auditor, or agents. Supplier agrees to indemnify, defend and hold harmless VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and other legal fees and disbursements) and costs (each, a "Claim" and collectively, "Claims") which are assessed against Commonwealth's Indemnified Parties in a final judgment, incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims arise out of or result from: (i) any bodily injury, death or damage to real or tangible property caused by the intentional or willful misconduct or negligence of any employee or subcontractor of Supplier, (ii) Commonwealth's Indemnified Parties' use of the Software, in accordance with the scope of the Agreement, actually or allegedly infringes or violates any copyright, trademark, United States patent, or trade secret of a third party. Supplier may settle any Claim provided such settlement does not include any financial or other material obligation on Commonwealth's Indemnified Parties, or does not otherwise implicate Commonwealth's Indemnified Parties in any alleged infringement action. Commonwealth's Indemnified Parties shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel of its choosing. Supplier shall have the foregoing obligation only if Commonwealth's Indemnified Parties provides Supplier with: (a) prompt written notification of the Claim; (b) sole control and authority over the defense or settlement thereof, subject to the provisions of item (xvii) above;

and (c) all available information, assistance and authority to settle and/or defend any such Claim, at Supplier's expense. Supplier will have no liability for infringement claims which arise with respect to any Third Party Software.

If any Supplier Software becomes, or in Supplier's opinion is likely to become, the subject of an infringement Claim, Supplier may, at its sole option: (a) procure, at no cost to Commonwealth's Indemnified Parties, the right to continue using the Supplier Software; (b) replace or modify the Supplier Software to render it non-infringing, provided there is no material loss of functionality; or (c) if, in Supplier's reasonable opinion, neither (a) nor (b) above are commercially feasible, terminate the license and, for all Commonwealth's Indemnified Parties which purchased Supplier Software directly from Supplier, refund the amounts the applicable Commonwealth's Indemnified Party(ies) paid for such Supplier Software as depreciated on a straight-line sixty (60) month basis. Except as provided in this section, the foregoing provisions of this section state Supplier's sole obligation and Commonwealth's Indemnified Parties' exclusive remedy in the event any such claim or action is commenced or is likely to be commenced.

Supplier will not be liable under this section for any claim or action to the extent that: (a) such claim or action would have been avoided but for modifications of the Supplier Software, or portions thereof, not made by supplier after delivery to Commonwealth's Indemnified Parties; (b) such claim or action would have been avoided but for the combination or use of the Supplier Software, or portions thereof, with other products, processes or materials not provided by Supplier; (c) Commonwealth's Indemnified Parties continue allegedly infringing activities after being notified thereof or after receiving from Supplier modifications that would have avoided the alleged infringement; or (d) Commonwealth's Indemnified Parties' use of the Supplier Software is not strictly in accordance with the terms of this Agreement. In no event shall any Authorized User be required to pay any additional fee or charge in order to receive modifications, upgrades, or updates to supplier's software which modifications, upgrades, or updates are intended by supplier to correct any infringing element of Supplier's software.

- x). Any Authorized User may rely on independent contractors, acting on behalf of such Authorized User, to perform functions requiring the use of and access to the Supplier's Software. Nothing in the Supplier's standard form contract shall limit such third parties from using or accessing the Software in order to perform such functions; provided (i) such Authorized User executes a confidentiality agreement with such independent contractor that contains substantially similar terms as set forth in the Agreement; (ii) such independent contractor shall be permitted to use the Software solely to operate or support the business of the Authorized User as set forth in the Agreement; (iii) under no circumstances may the independent contractor use the Software to operate or provide processing services to any other party, or in connection with such independent contractor's own business operations; and (iv) a breach by the independent contractor shall be considered a breach by the Authorized User.
- xi). Nothing in this contract shall be construed as conveying any rights or interest in Commonwealth data to Supplier.
- xii). The currency which shall be used for this contract is United States Dollars. Any claim which may arise hereunder shall be settled in United States Dollars.
- xiii). Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by the appropriate Authorized User and shall be reimbursed at the then-current per diem rates published by the Virginia Department of Accounts.
- xiv). All payment obligations under this contract are subject to the availability of federal, state, and/or local appropriations for this purpose. In the event of non-appropriation of funds for the items under this contract, VITA may terminate, in whole or in part, this contract or any order or Statement of Work, for those goods or services for which funds have not been appropriated. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations.

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- xv). Supplier acknowledges that an Authorized User may require that Supplier personnel submit to a criminal background check prior to entering such Authorized User's premises in order to perform any services or to exercise any other rights and responsibilities under this contract.
 - xvi). Any references in Supplier's contract to fees, ordering, and payment shall be applicable only when the software is purchased directly from Supplier, rather than through a reseller.
 - xvii). No Authorized User shall create any updates, enhancements, translations, customized versions or other versions or derivative works of the software; and the language regarding assignment of intellectual property rights in such updates, enhancements, translations, customized versions or other versions or derivative works shall not apply. Notwithstanding the foregoing, VITA and its Authorized Users acknowledge and agree that the creation of any updates, enhancements, translations, customized versions or other versions or derivative works of the software is strictly prohibited and would be considered a material breach subject to termination.
 - xviii). Unless otherwise agreed and in accordance with the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia), Sections 3, Equipment, and 4, Professional Services, of Supplier's contract will not apply.

The following confidentiality provisions shall apply in the event of an audit by Supplier or Auditor of an Authorized User's use of the Software:

- i). "Confidential Information" is any confidential or proprietary information of a party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other party in connection with or as a result of discussions related to or execution of this contract, including Supplier's software and documentation, and the rights and obligations contained herein, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing party.
- ii). Treatment and Protection. Each party shall (i) hold in strict confidence all Confidential Information of any other party, (ii) use the Confidential Information solely to perform or to exercise its rights under this contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, either party may disclose the Confidential Information to subcontractors, contractors or agents that are bound by non-disclosure contracts. Each party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).
- iii). Exclusions. The term "Confidential Information" shall not include information that is: (i). in the public domain through no fault of the receiving party or of any other person or entity that is similarly contractually or otherwise obligated; (ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing party and without breach of this contract; (iii). developed independently by the receiving party without reference to the Confidential Information of the other party; or (iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.
- iv). Return or Destruction. Upon the termination or expiration of this contract or upon the earlier request of the disclosing party, the receiving party shall (i) at its own expense, (a) promptly return to the disclosing party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing party, or (b) upon written request from the disclosing party, destroy such Confidential Information and provide the disclosing party with written certification of such destruction, and (ii) cease all further use of the other party's Confidential Information, whether in tangible or intangible form.

This contract, consisting of this VITA addendum and the attached Supplier's standard form contract, constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract has been reviewed by staff of VITA. Its substantive terms are appropriate to the needs of VITA and sufficient funds have been allocated for its performance by VITA.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

Supplier

By: 

(Signature)

Name: James R. Arnold Jr.

(Print)

Title: SVP & CFO

Date: 3/2/2007

VITA

By: 

(Signature)

Name: Doug LESLIE

(Print)

Title: STRATEGIC SOURCING SPECIALIST

Date: 3/9/2007

Nuance Communications, Inc.

SPEECHATTENDANT™ SYSTEM PURCHASE AGREEMENT by and between

("LICENSEE")

and

NUANCE COMMUNICATIONS, INC. ("NUANCE")

| | | | |
|--|---|---------------|--------------|
| Effective Date: | , 2007 | | |
| LICENSEE Corporate Name: | | Tax ID | |
| Address: | | | |
| Phone: | | Fax: | |
| LICENSEE Shipping Address: | | | |
| Contact Name: | | Email: | |
| Contact Phone: | | Fax: | |
| LICENSEE Billing Address: | | | |
| Contact Name: | | Email: | |
| Contact Phone: | | Fax: | |
| NUANCE Corporate Name: | Nuance Communications, Inc. | | |
| Incorporated under the Laws of: | Delaware | | |
| Address: | One Wayside Road Burlington, Massachusetts 01803 USA | | |
| Phone: | 781-565-5000 | Fax: | 781-565-5562 |

ORDER

Configuration:

System Fees: \$

SpeechCare Service Level:

- ☐ SpeechCare™ Enterprise Edition
- ☐ SpeechCare™ Premium Edition
- ☐ SpeechCare™ Large Enterprise Edition

SpeechCare Term Years
(Including the Initial Support Term):

SpeechCare Fees: \$ Currency: ☐ US \$ ☐ Canadian \$

Total Fees: \$

THIS AGREEMENT IS GOVERNED BY THE ATTACHED TERMS AND CONDITIONS. LICENSEE ACKNOWLEDGES THAT IT HAS READ AND AGREES TO BE BOUND BY SUCH TERMS AND CONDITIONS. IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN DULY EXECUTED BY THE PARTIES HERETO, AS OF THE EFFECTIVE DATE.

LICENSEE:

NUANCE:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

SPEECHATTENDANT™ SYSTEM PURCHASE AGREEMENT TERMS AND CONDITIONS

1 DEFINITIONS

In addition to the terms defined above and elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

- 1.1 "Content" shall mean the information loaded on to SpeechAttendant system including company information, events, employment, addresses, and locations, which is then accessible, by internal and external callers to the SpeechAttendant system.
- 1.2 "Designated System" shall mean the Equipment, operating system and associated relevant components in which the SpeechAttendant system is installed.
- 1.3 "Documentation" shall mean the operating manuals and all other related materials in the English language, which Nuance may, from time to time, supply to licensees of SpeechAttendant to facilitate its use and application.
- 1.4 "Equipment" shall mean the third party hardware included in SpeechAttendant and listed on Exhibit A attached hereto.
- 1.5 "Initial Support Term" shall mean the one (1) year period immediately following Delivery of a New System, included in the System Fees in the initial Order. The SpeechCare Services Level for the Initial Support Term shall be the SpeechCare Enterprise Edition, unless Licensee purchases the SpeechAttendant Large Enterprise, then the SpeechCare Services Level for the Initial Support Term shall be the SpeechCare Large Enterprise Edition.
- 1.6 "License" shall mean the license in the Licensed Programs granted in Section 2.1 of this Agreement.
- 1.7 "Licensed Programs" shall mean the (i) Nuance Software and (ii) Third Party Software that is sublicensed to Licensee hereunder.
- 1.8 "Names" shall mean the names, (including proper names of individuals and department names) accessible to internal and external callers to the SpeechAttendant system; aliases or nicknames associated with a proper name are not counted as distinct Names.
- 1.9 "New System" shall mean licenses in Equipment that are activated for the first time.
- 1.10 "Nuance Software" shall mean the Nuance proprietary software, in executable form listed in the Order, including all corrections, modifications, enhancements, Updates and Upgrades (if any), which may be provided to Licensee by Nuance hereunder, specifically excluding any Third Party Products.
- 1.11 "Ports" shall mean the telephone channels that, when enabled by the Nuance Software, are capable of either recognizing spoken words and/or DTMF tones. The License Fees are based, in part, on the number of Ports configured in the Designated System.
- 1.12 "Services" shall mean those installation, consulting, implementation, training and maintenance services provided hereunder, including SpeechCare Service.
- 1.13 "SpeechCare Services" shall mean the maintenance and support services described in Section 5.1 of this Agreement.
- 1.14 "SpeechAttendant" shall mean Nuance's proprietary solution comprised of the (i) Nuance Software, (ii) Third Party Products and (iii) Services.
- 1.15 "Third Party Products" shall mean the (i) Third Party Software and (ii) Equipment.
- 1.16 "Third Party Software" shall mean the third party software products indicated on Exhibit A attached hereto that are distributed or licensed to Licensee by Nuance under this Agreement.
- 1.17 "Updates" shall mean a release of the Nuance Software that consists of error corrections and minor functional enhancements that are provided by Nuance to customers who subscribe to the SpeechCare Service.
- 1.18 "Upgrades" shall mean a release of the Nuance Software that consists of substantial functional enhancements that are provided by Nuance to customers who subscribe to the SpeechCare Service.

2 GRANT OF RIGHTS

- 2.1 Software License. Subject to the terms, conditions and restrictions set forth in this Agreement, Nuance hereby grants, and Licensee hereby accepts, a non-exclusive, non-transferable, right and license, to use (i) the Licensed Programs on the Designated System only in accordance with the Documentation, and (ii) the Documentation, each only for Licensee's internal business purposes. Licensee's use of the Licensed Programs at any given time may not exceed the number of Ports or Names which Licensee is licensed to use as specified in this Agreement. In the event that Licensee elects to increase the number of licensed Ports or Names, it may do so by delivering a supplemental Order form, and paying to Nuance the applicable fees for such increase. Licensee shall be deemed to have been granted such increased license rights upon receipt of a completed Order form and the applicable fees by Nuance.
- 2.2 Term. The License granted to Licensee herein shall commence on the Effective Date, and shall continue in effect perpetually unless terminated under Section 11 of this Agreement.
- 2.3 Copies. Licensee may make one (1) copy of the SpeechAttendant system for Licensee's internal back-up and archival purposes only, provided that such copy shall bear the original and unmodified copyright, patent and other intellectual property markings as originally delivered by Nuance.
- 2.4 Restrictions. Licensee will not itself, or through any parent, subsidiary, affiliate, agent or other third party: (a) modify, port, translate, localize, or create derivative works of the Licensed Programs or any Confidential Information of Nuance or its licensors or vendors; (b) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Licensed Programs by any means whatsoever, or disclose any of the foregoing; (c) sell, lease, license, sublicense, copy, market or distribute the Licensed Programs; (d) provide training or consulting to third parties in the use of the Licensed Programs or enter into time-sharing arrangements for use of the Licensed Programs with third parties; (e) encumber or suffer to exist any lien or security interest on any Licensed Programs; (f) knowingly take any action that would cause any Licensed Programs to be placed in the public domain; (g) use the Licensed Programs in any computer environment other than on the Designated System; and (h) release to a third party the results of any benchmark testing of the Licensed Programs.
- 2.5 Location of Designated System. The logical network and physical location of the Designated System is set forth in the Site Preparation Guide. Licensee may relocate the Designated System logically or physically, provided Licensee notifies Nuance of the subsequent location in writing thirty (30) days in advance of the change, so as not to affect the provision of Services by Nuance or its vendors or licensors. Notwithstanding the foregoing, under no circumstances may Licensee move the Designated System outside of the United States.
- 2.6 Third Parties. Licensee's use and disclosure of the Licensed Programs is restricted solely to its employees who acknowledge the confidential nature of the Licensed Programs and agents and independent contractors who agree in writing to be bound by the confidentiality provisions set forth in Section 7 of this Agreement. Licensee agrees that it is fully responsible for the actions of each of its employees, agents and independent contractors with respect to the proper use and protection of the Licensed Programs, whether or not such individual is or was acting within the scope of his or her employment or authority.
- 2.7 Additional Terms and Conditions. Licensee agrees to abide by and be bound by the terms and conditions of any third party products or licenses, provided by third party vendors used in conjunction with the Nuance Software. The licenses and other rights granted pursuant to this Agreement shall be subject to the additional terms and conditions set forth in the Exhibits hereto, if any.

- 2.8 **Audit Rights.** Nuance may, upon thirty (30) days' advance notice and at its expense, conduct an annual audit, during Licensee's normal business hours, of Licensee's use of the Licensed Programs and Documentation to verify compliance with this Agreement.

3 EQUIPMENT PURCHASE

Subject to the provisions of this Agreement, Nuance shall sell and deliver to Licensee, and Licensee shall purchase from Nuance, the Equipment as configured by Nuance pursuant to Section 4.1 below. The Equipment shall be delivered to Licensee by a carrier designated by Nuance to a shipping point designated by Licensee. Delivery shall be deemed to have occurred from Nuance's office located in Montreal, Canada. Risk of loss and title to the Equipment shall pass to Licensee upon delivery by Nuance of the Equipment to the carrier.

4 PROFESSIONAL SERVICES

- 4.1 **Professional Services.** Upon receipt of an executed purchase order from Licensee, and subject to Licensee's performance of its obligations hereunder, including without limitation under Section 4.2 below, Nuance shall perform the following services:

- (a) **Site Preparation Guide.** Nuance will provide Licensee with a copy of the Site Preparation Guide, that provides Licensee with the information needed to prepare the physical location for the SpeechAttendant™ computer and connect to Licensee's telephone system.
- (b) **Hardware Configuration.** Upon receipt by Nuance of delivery of the Equipment ordered on Licensee's behalf, Nuance will build and configure the SpeechAttendant system.
- (c) **Recording of Prompts.** If Licensee elects to subscribe to such service, using professional voice talent provided by Nuance, Nuance will record the authorized number of Names and Content for the initial deployment of SpeechAttendant.
- (d) **Integration of Licensee Information.** Once the Names and Content have been recorded by Nuance, Nuance will integrate the Names and Content into SpeechAttendant.
- (e) **Installation and Integration.** Upon notification by Licensee that the preconfigured Equipment has arrived at the Licensee site where SpeechAttendant is to be installed and deployed, Nuance will install SpeechAttendant according to schedule mutually agreed upon as per Site Preparation Guide. Nuance will integrate SpeechAttendant with one PBX which is supported by Nuance and confirm that SpeechAttendant operates properly with aforementioned PBX.
- (f) **Training.** Nuance will provide up to four (4) hours of training to the Licensee regarding operation and maintenance of SpeechAttendant.

- 4.2 **Licensee Installation Obligations.** Licensee shall:

- (a) Complete and deliver to Nuance within two (2) weeks of receipt from Nuance, the Site Preparation Guide.
- (b) Prepare installation site and systems as indicated in the Site Preparation Guide or as otherwise indicated in the Documentation.
- (c) Permit Nuance reasonable use of necessary machines, communication facilities and equipment and otherwise use best efforts to cooperate with Nuance during installation.

5 MAINTENANCE AND SUPPORT SERVICES

- 5.1 **SpeechCare Services.** Subject to Section 5.2 hereof, Nuance shall provide to Licensee the basic SpeechCare Service as described in Exhibit B for the Initial Support Term for New Systems under this Agreement.

- 5.2 **Term, Renewal.** After the expiration of the Initial Support Term, SpeechCare Services shall be automatically renewed for successive one (1) year terms ("Renewal Term") after the Initial Support Term, at the same maintenance level, unless Licensee otherwise selects a different SpeechCare level, unless either party gives the other written notice of its intent not to renew at least sixty (60) days prior to the expiration of the Initial Support Term or Renewal Term.

- 5.2 **Licensee Obligations.** As a condition to performance by Nuance of the SpeechCare Services described herein and in Exhibit B, Licensee shall fulfill the following obligations:

- (a) Pay all fees required under this Agreement;
- (b) Attend all required training offered by Nuance regarding the use of SpeechAttendant;
- (c) Maintain SpeechAttendant at the version and release level required by Nuance;
- (d) **Subject to Licensee's security requirements, provide Nuance with reasonable access, including remote access, and use of all information and system facilities, which have been determined by the parties to be required in order that support may be provided pursuant to this Agreement;**
- (e) Provide supervision, control and management of the use of SpeechAttendant. In addition, Licensee shall implement procedures for the protection of information and the implementation of backup procedures;
- (f) Document and promptly report all errors or malfunctions of SpeechAttendant to Nuance. Licensee shall take all steps necessary to carry out procedures for the rectification of such errors or malfunctions within a reasonable time after such procedures have been provided by Nuance; and
- (g) Licensee shall be responsible for procuring, installing, and maintaining all hardware (other than the Equipment), telephone lines, and communications interfaces, necessary to operate SpeechAttendant and to obtain from Nuance the SpeechCare Services. Nuance shall not be liable for any damages caused by Licensee's use of equipment that is not compatible with SpeechAttendant.

- 5.3 **Limitations; Exclusive Remedy.** The SpeechCare Service shall apply only to the Nuance Software and shall not apply to any associated hardware, network or other software applications. Nuance shall not be obligated to render support services to Licensee customers or any other third party. The SpeechCare Service shall not apply to any portion of the Nuance Software that has been modified, or affected by a modification made, by any party other than Nuance. In the event that Nuance fails to provide SpeechCare Service according to the provisions of this Section 5 and Exhibit B, Nuance's only liability and Licensee's sole remedy for such failure shall be for Nuance to use commercially reasonable efforts to correct such failure through further services. The SpeechCare Service shall not apply if the failure of SpeechAttendant can be attributable to causes that are not the responsibility of Nuance.

- 5.4 **Third Party Products.** Nuance shall use commercially reasonable efforts to make available to Licensee the standard maintenance and support services provided to Nuance by the vendors of Third Party Products. Nuance does not guarantee, or make any warranty whatsoever with respect to, the delivery of such services.

- 5.5 **Cancellation and Reinstatement of Support.**

- (a) Nuance may suspend or cancel the SpeechCare Service set forth on Exhibit C if Licensee fails to pay the Maintenance and Support Fees or breaches the provisions hereof and such breach is not remedied within thirty (30) days after Licensee receives notice thereof.
- (b) After commencement of any Renewal Term, Licensee may terminate Service coverage upon thirty (30) days written notice, and shall only be responsible for the SpeechCare Services Fees up until the effective date of termination. After the first thirty (30) days of coverage, Licensee may provide notice to terminate the SpeechCare Services subject to a termination charge equal to fifty percent (50%) of the monthly charges for twelve (12) months or the SpeechCare Services Fees due for the remaining Renewal Term, whichever is less, in addition to the charges for the period of coverage up until the effective date of termination. For prepaid agreements, Nuance will refund or credit the pro rata price of the remaining term less the applicable termination charge.

6 FEES; TAXES

- 6.1 **Fees.** In consideration of the License granted in Section 2, the delivery of the Equipment and the Services, Licensee hereby agrees to pay to Nuance the Fees, in the amounts set forth in the Order form; such Fees shall be due and payable no later than thirty (30) days following the Effective Date. Licensee shall pay all reasonable travel and living expenses incurred in connection with the Services.
- 6.2 **Maintenance and Support Fees.** After the Initial Support Term, Licensee agrees to pay to Nuance Support Fees in the amounts specified in the Order form for the support period set forth thereon. Nuance shall render an invoice to Licensee for the Support Fees at least thirty (30) days in advance of the expiration of the Initial Support Term, and thereafter, on an annual basis, at least thirty (30) days in advance of the expiration of the current support period. All such invoices shall be due and payable in full within thirty (30) days from the date of such invoice.
- 6.3 **Taxes.** The payment obligations set forth in this Agreement are exclusive of all sales, use, value-added, privilege, excise or similar taxes or duties levied upon Licensee, Nuance, the Licensed Programs, the software support services, or any other charge or assessments established by any government agency, now in force or enacted in the future and which arise out of the transactions contemplated by the Agreement, except for taxes on Nuance's income, all of which shall be paid by Licensee. Nuance may invoice Licensee for any such taxes and remit any payments made on any such invoice directly to the appropriate taxing authorities. Licensee is responsible for obtaining and providing to Nuance any certificate of exemption or similar document required to exempt any license from sales, use or similar tax liability.
- 6.4 **Interest.** Past due balances on the amounts due to Nuance pursuant to this Agreement shall be subject to an interest charge of one and one-half percent (1½%) per month computed from the due date of each payment, or the maximum rate allowed by law in the Commonwealth of Massachusetts.

7 CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS

- 7.1 **Confidential Information Definition.** "Confidential Information" shall mean (a) the Nuance Software, in object and source code form, and any related technology, idea, algorithm or information contained therein, including without limitation any trade secrets related to any of the foregoing; (b) any information conveyed in written, graphic, machine-readable, or other tangible form, provided that such information is conspicuously marked or designated as confidential or proprietary; (c) any information conveyed orally or electronically where such information is either designated as confidential or proprietary at the time of such oral or electronic disclosure and confirmed, in writing, as confidential or proprietary within fifteen (15) days of such oral or electronic disclosure; and (d) any information that ought, in good faith, to be treated as confidential given its nature and/or the circumstances of its disclosure. Notwithstanding the above, information shall not be deemed Confidential Information to the extent that it (i) was generally known and available in the public domain at the time it was disclosed or subsequently becomes generally known and available in the public domain through no fault of the recipient; (ii) was rightfully known to the recipient at the time of disclosure and this can be shown by reasonable evidence; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the recipient without any use of the Confidential Information of the disclosing party; or (v) becomes known to the recipient from a source other than the disclosing party without breach of this Agreement and this can be shown by reasonable evidence. The obligation not to use or disclose Confidential Information will remain in effect until one of these exceptions occurs.
- 7.2 **No Disclosure.** Each party agrees not to disclose any Confidential Information transferred to it by the other party. Notwithstanding the foregoing, either party may disclose Confidential Information to its contractors who are bound by written obligations of confidentiality substantially similar to and, in any event, no less stringent than those set out in this Section 7 and who have a need

to know to carry out the purposes of this Agreement. Each party shall protect the other's Confidential Information from unauthorized dissemination and use and shall, in doing so, use the same degree of care that such party uses to protect its own like information but such party must use at least the degree of care that is reasonable under the circumstances. Neither party will use the other party's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information.

- 7.3 **This Agreement.** Each party agrees that the terms and conditions, and this Agreement itself, shall be considered Confidential Information, except as expressly otherwise stated in this Agreement; provided, however, that either party may reveal the contents of this Agreement to auditors or other professionals with a need to know in connection with such party's efforts to obtain financing, comply with legal or regulatory requirements or negotiate a merger, acquisition, or sale of substantially all the assets of such party's business. Any disclosure of the contents of this Agreement to auditors or other professionals shall only be made pursuant to an appropriate confidentiality agreement.
- 7.4 **Return of Confidential Information.** The receiving Party shall return to the disclosing Party, destroy or erase all Confidential Information of the disclosing Party in tangible form: (a) upon the written request of the disclosing Party; or (b) upon the expiration or termination of this Agreement, whichever comes first, and in both cases, the receiving Party shall certify promptly and in writing that it has done so.
- 7.4 **Proprietary Rights.** Except as expressly provided herein, title to, and ownership of, the Licensed Programs, whether owned by Nuance or its licensors and whether prepared by or for Nuance or any other person, including all Intellectual Property Rights (as defined below) shall at all times remain solely and exclusively with Nuance or its licensors, notwithstanding that the Licensee may contribute to the cost of or participate in the making of such derivative works, translations, customized versions, updates, error corrections, enhancements, or other versions. For purposes hereof, "Intellectual Property Rights" shall mean with respect to the Licensed Programs, all patents, copyrights, trade secrets, trade marks and other intellectual property rights applicable thereto and any derivative works, translations, customized versions, Updates, Upgrades, error corrections, enhancements, or other versions thereof prepared by Nuance or any other person through the date hereof and at all future times. Licensee agrees to assign, and hereby assigns to Nuance, its successors, and assigns, ownership of all intellectual property associated with software updates, enhancements, translations, customized versions or other versions or derivative works of the Licensed Programs. From time to time upon Nuance's request, Licensee shall confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as Nuance may reasonably request. Except as specifically set forth in this Agreement, Licensee shall have no other rights to use the Licensed Programs, derivative works, translations, customized versions, Updates, Upgrades, error corrections, enhancements, or other versions thereof.
- 7.5 **Subcontracting and Third Party Vendors.** Nuance shall have the right to engage contractors, temporary employees, consultants, vendors and suppliers at its discretion to assist it in fulfilling its obligations under this Agreement and any software support agreement or consulting agreement related thereto. In such event, Nuance shall remain primarily liable to Licensee for their performance hereunder. SpeechAttendant is furnished to Licensee with software by third party vendors. Licensee shall be subject to any terms, conditions and restrictions required by such third party vendors.

8 LIMITED WARRANTY AND DISCLAIMER

- 8.1 **Limited Warranty.** Nuance warrants for a period of one (1) year from Delivery that the Nuance Software, in the form delivered to Licensee by Nuance and when properly used for the purpose and

in the manner authorized by this Agreement, will perform substantially in accordance with the specifications set forth in the Documentation. The warranty is made only to Licensee and Nuance shall have no liability to any third party as a result of such warranty. If the Nuance Software does not substantially conform to such specifications, Licensee shall promptly notify Nuance and provide Nuance with all available information so that Nuance can reproduce any such nonconformity. Nuance's warranty obligations shall be void: (a) if any Nuance Software is modified without the express prior written consent of Nuance; (b) such nonconformity would have been avoided but for the combination or use of the Nuance Software, or portions thereof, with other products, processes or materials; or (c) Licensee's use of the Nuance Software is not strictly in accordance with the terms of this Agreement.

8.2 **Exclusive Remedy.** Nuance's sole obligation and Licensee's sole and exclusive remedy for any breach of the warranty in Section 8.1 is for Nuance to use commercially reasonable efforts to remedy any substantial non-conformities reported by Licensee. NUANCE MAKES NO REPRESENTATION OR WARRANTY THAT ALL ERRORS HAVE BEEN OR CAN BE ELIMINATED FROM THE NUANCE SOFTWARE, THAT IT WILL OPERATE WITHOUT INTERRUPTION OR THAT IT WILL OPERATE WITH OTHER PRODUCTS.

8.3 **Pass Through Warranties.** Nuance hereby assigns to Licensee all warranties that have been granted to Nuance by third party vendors regarding Third Party Products to the extent that such warranties can be assigned.

8.4 **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 8, NUANCE MAKES NO ADDITIONAL WARRANTY, EXPRESS OR IMPLIED. NUANCE EXPRESSLY DISCLAIMS ALL WARRANTIES WHATSOEVER WITH RESPECT TO THIRD PARTY PRODUCTS, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8.5 **Acknowledgement.** Licensee acknowledges that SpeechAttendant has not been prepared to meet the Licensee's individual requirements. Accordingly, Nuance shall not be liable for any failure to provide any facility or function not specified in the Documentation. It is the responsibility of the Licensee to ensure that the functions and facilities performed by SpeechAttendant meet its requirements.

9 INFRINGEMENT MATTERS; INDEMNITIES

9.1 **Indemnity.** Nuance agrees, at its own expense, to defend or, at its option, to settle, any claim or action brought against Licensee to the extent it is based on a claim that Licensee's use of the Nuance Software in accordance with the scope of this Agreement directly infringes or violates any United States patent, copyright, trademark, or trade secret of a third party, and will indemnify and hold Licensee harmless from and against any losses, damages, and expenses (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against Licensee in a final judgment. Nuance shall have the foregoing obligation only if Licensee provides Nuance with: (a) prompt written notification of the claim or action; (b) sole control and authority over the defense or settlement thereof; and (c) all available information, assistance and authority to settle and/or defend any such claim or action, at Nuance's expense. Nuance will have no liability for infringement claims which arise with respect to Third Party Software.

9.2 **Limited Remedies.** If any Nuance Software becomes, or in Nuance's opinion is likely to become, the subject of an infringement claim or action, Nuance may, at its sole option: (a) procure, at no cost to Licensee, the right to continue using the Nuance Software; (b) replace or modify the Nuance Software to render it noninfringing, provided there is no material loss of functionality; or (c) if, in Nuance's reasonable opinion, neither (a) nor (b) above are commercially feasible, terminate the license and refund the amounts Licensee paid for such Nuance Software as depreciated on a straight-line sixty (60) month basis. Except as provided in Section 9.1, the foregoing provisions of this Section

9.2 state Nuance's sole obligation and Licensee's exclusive remedy in the event any such claim or action is commenced or is likely to be commenced.

9.3 **Limitations: Licensee Indemnity.** Nuance will have no liability under this Section 9 for any claim or action where: (a) such claim or action would have been avoided but for modifications of the Nuance Software, or portions thereof, made after delivery to Licensee; (b) such claim or action would have been avoided but for the combination or use of the Nuance Software, or portions thereof, with other products, processes or materials; (c) Licensee continues allegedly infringing activities after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (d) Licensee's use of the Nuance Software is not strictly in accordance with the terms of this Agreement. Licensee agrees to indemnify and hold Nuance harmless from and against all losses, damages and expenses, including reasonable attorney's fees, in connection with any claims brought against Nuance and its officers, employees, agents or subcontractors arising as a result of any of the conditions described in clauses (a) through (d) above and as a result of Licensee's use of the Nuance Software, including claims of Licensee's employees, officers, shareholders, directors and customers or governmental agencies. Licensee shall be released from the foregoing obligation unless Nuance provides Licensee with: (i) prompt written notification of the claim or action; (ii) sole control and authority over the defense or settlement thereof; and (iii) all available information, assistance and authority to settle and/or defend any such claim or action, at Licensee's expense.

10 LIMITATION OF LIABILITY

10.1 **LIMITATION OF LIABILITY.** The total aggregate liability of Nuance and its suppliers to Licensee and its officers, directors, customers and employees for any and all claims arising under or in connection with this Agreement, regardless of the form of action (including, but not limited to actions for breach of contract, negligence, strict liability, rescission and breach of warranty) will not exceed the aggregate fees actually paid to Nuance for the SpeechAttendant system. Nuance's limitation of liability is cumulative with all Licensee's payments being aggregated to determine satisfaction of the limit. The existence of more than one claim shall not enlarge or extend the limit.

10.2 **NO CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL NUANCE BE LIABLE TO LICENSEE OR A THIRD PARTY FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES AND LOSS OR PROFITS, AND LOSS OR INTERRUPTION OF DATA OR COMPUTER TIME, EVEN IF NUANCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11 TERMINATION

11.1 **Licensee Termination.** Licensee may terminate this Agreement for any reason upon thirty (30) days written notice.

11.2 **Termination by Nuance.** Nuance may terminate this Agreement immediately upon giving notice in writing to Licensee in the following circumstances: (a) if Licensee fails to pay any sums due to Nuance pursuant to the terms of this Agreement, or any other agreement between the parties, within thirty (30) days of the due date, whether or not demanded by Nuance; (b) if Licensee has committed a material breach of this Agreement and shall have failed to cure such breach within thirty (30) days of receipt of written notice thereof; (c) if Licensee breaches any obligation, condition or restriction under Section 2 hereof or commits, or permits any third party to commit, any breach of confidentiality obligations owed to Nuance; or (d) if Licensee files or has filed against it a petition in bankruptcy, has a receiver appointed to handle its assets or affairs or admits that it is insolvent or is otherwise unable to pay its debts as they mature.

11.3 **Effect of Termination.** Immediately upon the termination or expiration of this Agreement (whether pursuant to this Section 11 or for any other reason): (a) Licensee shall immediately cease use of the Licensed Programs (in any form, including partial copies in its possession or under its control), and, within ten (10)

days of such termination, return all copies of the Licensed Programs to Nuance, and certify in writing to Nuance that no copies have been retained by it; and (b) any outstanding amounts due to Nuance hereunder shall immediately become due and payable. Termination shall not effect any other remedy that either party may have at law or equity. Termination of the License or this Agreement by Licensee or Nuance shall in no event entitle Licensee to a refund of any fees, except as expressly provided herein or relieve Licensee of any payment obligation then due.

- 11.4 Survival. Notwithstanding anything to the contrary in this Section 11, the provisions of Sections 1, 2.4, 6, 7, 8.4, 10, 11, and 12 shall survive termination of this Agreement.

12 GENERAL TERMS

- 12.1 Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, acts of God, governmental acts or orders or restrictions, act of terrorism, war, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party and not due to its fault or negligence.
- 12.2 Assignment. Neither party shall assign this Agreement or any right hereunder or assign or delegate any obligation hereunder without the express written consent of the other party, except that Nuance may assign this Agreement to an affiliated corporation or other entity that it controls or as security any money due to a bank or other financial institution or to a person or entity that acquires all or substantially all of the assets or shares in the capital of Nuance. All the provisions of this Agreement shall enure to the benefit of, and shall be binding upon, the parties hereto and their successors, representatives and permitted assigns.
- 12.3 Notices. Any required notices hereunder shall be given in writing at the address of each party set forth above, or to such other in the manner contemplated herein, and shall be deemed served when delivered or, if delivery is not accomplished by reason or some fault of the addressee, when tendered.
- 12.4 Relationship Between the Parties. In all matters relating to this Agreement, Licensee and Nuance shall act as independent parties. Except as may be otherwise expressly permitted hereunder, neither party will represent that it has any authority to assume or create any obligation, expressed or implied, on behalf of the other party, or to represent the other party as agent, employee, or in any other capacity. Neither party shall have any obligation, expressed or implied, except as expressly set forth herein.
- 12.5 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts without giving effect to principles of conflicts of laws and Licensee hereby submits to the exclusive jurisdiction of the federal and state courts situated in said Commonwealth and the applicable service of process.
- 12.6 Injunctive Relief. Licensee recognizes and acknowledges that any use or disclosure of the Nuance Software; Documentation or Nuance's Confidential Information by the Licensee in a manner inconsistent with the provisions of this Agreement may cause Nuance irreparable damage for which remedies other than

injunctive relief may be inadequate, and Licensee agrees that in any request by Nuance to a court of competent jurisdiction for injunctive or other equitable relief seeking to restrain such use or disclosure, Licensee will not maintain that such remedy is not appropriate under the circumstances. The parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.

- 12.7 Export Controls: Government Use. Licensee agrees and certifies that neither the Nuance Software, nor any other technical data received from Nuance, nor the direct product thereof, will be exported or re-exported outside the United States except as authorized and as permitted by the laws and regulations of the United States. Licensee shall indemnify and defend Nuance and hold Nuance harmless from any and all liability, charges, costs, losses, damages and liabilities, including attorneys' fees, incurred by Nuance as a result of or arising from any breach of this obligation. Any use of the Nuance Software by the U.S. Government is conditioned upon the Government agreeing that the Nuance Software is subject to Restricted Rights as provided under the provisions set forth in subdivision (c)(1)(ii) of Clause 252.227-7013 of the Defense Federal Acquisition Regulations Supplement, or the similar acquisition regulations of other applicable U.S. Government organizations.
- 12.8 Entire Agreement: Headings: Counterparts. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings, promises and representations made by one party to the other concerning the subject matter herein and the terms and conditions applicable thereto. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorized representative of each of the parties. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument.
- 12.9 Partial Invalidity: Waiver. If any provision of this Agreement or the application thereof to any party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event the parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision. Any deviation by either party from the terms and conditions of this Agreement required to comply with applicable laws, rules and regulations shall not be considered a breach of this Agreement. No failure of either party to exercise any power or right given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

EXHIBIT A

THIRD PARTY PRODUCTS

Third Party Software

- Microsoft Windows 2000 Professional or Server
- Dialogic drivers
- VTG drivers
- pcAnywhere
- Perl
- Apache
- Microsoft SQL Server 24 ports+

Use of third party software will be in accordance with terms provided by third party licensors.

Equipment

Dialogic cards used in SpeechAttendant (numbers of card(s) to be determined based on number of ports requested)

- JCT 4, 12 ports (Analog)
- JCT 24 ports (T-1)
- JCT 8, 16 ports with VTG PCI (Digital)
- Dual NIC Intel Pro (CISCO IP)

Dell Optiplex and PowerEdge platforms are certified SpeechAttendant hardware configurations (exact configuration is based on number of ports and number of entries), next business day on-site response; 7 days x 24 hours a day and one-year Windows 2000 Support is included.

Appropriate documentation including administration guide will be provided with the SpeechAttendant System.

EXHIBIT B

SPEECHCARE™ FOR SPEECHATTENDANT™ MAINTENANCE AND SUPPORT SERVICES

1. Maintenance and Support Services.

- (a) Nuance will provide SpeechCare Services during the Initial Support Term and any Renewal Term in accordance with your selected maintenance level, further described in Exhibit C, and subject to the exclusions set forth in Section 3.
- (b) SpeechCare Services include preventive maintenance as deemed appropriate by Nuance and remedial maintenance, including replacement parts required for product used under normal operating conditions.
- (c) If you subsequently purchase additional Nuance Software ("Additional Nuance Software") from a Nuance Business Partner or from Nuance and co-locate such Added Nuance Software with the existing ones, the Additional Nuance Software will be automatically covered under this Agreement. Following the installation of the Additional Nuance Software, Nuance will automatically adjust SpeechCare Services fees and bill you for the remainder of the Renewal Term.
- (d) Nuance will support the then-current version of the Nuance Software and the immediately two (2) prior versions. Licensee will be responsible for ensuring that the particular release specified for the system software (such as operating system, firmware or utilities) is being used. Nuance may suspend M&S Services until the necessary system software is installed. Licensee's obligation to pay fees for the then-current M&S Period will not be affected by such suspension.
- (e) REPLACEMENT PARTS AND PRODUCT MAY BE NEW, REMANUFACTURED OR REFURBISHED. Any removed parts and/or Product referred to in Section 3(b) will become the property of Nuance.
- (f) Nuance will, at its discretion, electronically monitor your system. Such monitoring will serve three main purposes: (1) collect information of system that will permit remote diagnostics and corrective actions; (2) collect information on the then current system configuration will be used once a year, before the Renewal Term, or the annual anniversary date of a multi-year term, to determine applicable charges; and (3) proactively monitor your system according to Customer's selected maintenance level. You will assist Nuance in such data collection and system monitoring, including by making remote access available to Nuance for this purpose.
 - (i) Nuance shall only use the Information for the sole purpose of fulfilling its obligations under this Agreement and/or any other agreement between Nuance and Customer, or as otherwise required by law.
 - (ii) Nuance shall not use access to the Customer network for any purpose other than performing the services under this Agreement. If any information is obtained by Nuance through the Customers' network, such information shall be deemed Customers' Proprietary Information and shall be returned promptly to the Customer.
- (g) If the Nuance Software does not operate in accordance with the Documentation during the Initial Support Term or any Renewal Term, you must promptly notify Nuance. Nuance, at its discretion, will either repair or replace the Nuance Software without charge.
- (h) When the following hardware is purchased from Nuance or a Nuance Authorized Business Partner ("Business Partner"), the following coverage applies:
 - (i) Server: Each server is subject to the manufacturer's warranty as specified by the manufacturer. The initial server warranty was transferred to you, and will cover a term ending as specified by the server's manufacturer. You are responsible for renewing the server service agreement with the manufacturer. Nuance is not responsible for any change of service from the manufacturer during the term of the

server service agreement, or if the manufacturer fails to supply or otherwise perform the service level. For more information on the server service agreement, contact the server manufacturer directly.

- (ii) Intel voice processing boards are warranted by Nuance against defects for a minimum period of three years from date of the purchase agreement, depending on the selected Service Level. This assumes continuous maintenance service from the date of the purchase agreement, and normal use and operating conditions. In the event of a defect that requires either repair or replacement, material issued as replacement shall continue to be protected by the original warranty, or for ninety (90) days, whichever is greater. Nuance reserves the right not to warrant this equipment if the claim is made after a period of five (5) years from the initial equipment delivery date, or if you fail to respect Customer Responsibilities as described in Section 2 of this Agreement. A claim of any kind, shall initially be reported to Nuance. Nuance will help determine the nature of the problem and then recommend the best course of action, whether it is
 - 1. to dispatch, at Nuance's discretion, on-site technical support;
 - 2. provide problem information for you to contact the server manufacturer for any server defect. You, as the bearer of the server warranty, are the only authorized person that can contact the server manufacturer for service; or
 - 3. to arrange for the repair/replacement of the part.

2. Customer Responsibilities. You agree to (i) provide the proper environment, electrical and telecommunications connections, including a high-speed secure unrestricted access to Product, (ii) provide access and work space, (iii) maintain a procedure external to the software program(s) and host computer for reconstruction of lost or altered files, data or programs, and (iv) maintain the Operating System and 3rd party software according to the Product's specifications. You are responsible for data protection and disaster recovery. You are responsible for notifying Nuance of the presence of any hazardous material on your premises prior to the commencement of any Services. You are also responsible for removal of any such hazardous material or correction of any hazardous condition that affects Nuance's performance of Services. Services will be delayed until you remove or correct the hazardous condition; Nuance shall not be liable to you as a result of such delays.

3. Maintenance Service Exclusions.

- (a) EXCEPT AS STATED IN SECTION 1, NUANCE, ITS SUBSIDIARIES AND THEIR AFFILIATES, SUBCONTRACTORS AND SUPPLIERS, MAKE NO WARRANTIES EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- (b) The Services outlined in Section 1 does not cover repair for damages, or malfunctions, or performance characteristics caused by: (i) use of non-Nuance furnished equipment, software, or facilities with the Product(s) (i.e., telephone service or switch); (ii) your failure to follow Nuance's installation, operation or maintenance instructions, including your failure to permit Nuance timely remote access to your Product; (iii) failure or malfunction of equipment, software, or facilities not serviced by Nuance; (iv) actions of non-Nuance personnel; or (v) force majeure conditions as stated in the Agreement.

- (c) Nuance does not warrant uninterrupted or error free operation of the Nuance Software. In addition, Nuance is not obligated to provide warranty or maintenance service if you modify the Nuance Software. If you request, Nuance or Nuance Business Partner will perform repair or other services not covered by this Agreement to your Nuance Software at Nuance's or Nuance Business Partner's then current standard rates for such service. You will be notified of such rates and will be provided a written estimate prior to the commencement of any non-covered repairs or services.
- (d) Although the Nuance Software is designed to be reasonably secure, Nuance makes no express or implied warranty that the Nuance Software is immune from or prevents fraudulent intrusion, unauthorized use or disclosure or loss of proprietary information.
- (e) You agree to notify Nuance prior to moving the Nuance Software. Additional charges may apply if Nuance incurs additional costs in providing maintenance services as a result of a move of the Nuance Software.

- (f) If the Nuance Software supports Telephony or Transmission Control Protocol/Internet Protocol (TCP/IP) facilities, you may experience certain degradation in performance, reliability and security, even when the Product performs as warranted. The degradation may become more acute if you fail to follow Nuance's recommendations for configuration, operation and use of the Nuance Software.

YOU ACKNOWLEDGE THAT YOU ARE AWARE OF THESE RISKS AND THAT YOU HAVE DETERMINED THEY ARE ACCEPTABLE FOR YOUR APPLICATION OF THE NUANCE SOFTWARE. YOU ALSO ACKNOWLEDGE THAT, UNLESS EXPRESSLY PROVIDED IN ANOTHER AGREEMENT, YOU ARE SOLELY RESPONSIBLE FOR (1) ENSURING THAT YOUR NETWORKS AND SYSTEMS ARE ADEQUATELY SECURED AGAINST UNAUTHORIZED INTRUSION, AND (2) BACKING UP YOUR DATA AND FILES.

EXHIBIT C

SPEECHCARE™ FOR SPEECHATTENDANT™ SERVICES LEVEL DESCRIPTION

A. SpeechCare Services

| Entitlements | SpeechCare Enterprise Edition | SpeechCare Premium Edition | SpeechCare Large Enterprise Edition |
|---|---|---|---|
| Technical Support ¹ (Email, Telephone, Web) | 8 a.m. to 5 p.m. Customer's Local Time 5 day business coverage | 7 x 24 service for emergencies | 7 x 24 service for emergencies |
| Pronunciations Dictionary Update ² | Monthly | Weekly | Not Applicable |
| On Going Professional Name Recordings Update | No | Yes – 20 % of directory size | Yes – Up to your current directory size |
| On Going Professional Prompt Recordings Update ³ | 3 requests for a maximum of 10 prompts included per Year | 6 requests for a maximum of 50 prompts Per Year | 6 requests for a maximum of 50 prompts Per Year |
| Major Software Version Upgrades (major releases) ⁴ | No | Yes | Yes |
| Software Version Updates ³ (Hot fixes and service releases) | Yes | Yes | Yes |
| Voice Board Replacement ³ | 3 years from initial purchase | 5 years from initial purchase | 5 years from initial purchase |
| Training ³ | Yes, Web-based general training | Yes, General and Personalized training | Yes, General and Personalized training |
| Complete detail attached ⁴ | Enterprise-001 | Premium-001 | LEE-001 |

¹ Excludes January 01, Labor day & December 25.

² Available only if Customer provides Nuance with direct access on an on-going, continuous basis to the system on which the Product is installed.

³ Services available at end-users request

⁴ Click on an Icon for more details on the Service offering you selected or email us at speechattendant.sales@nuance.com to receive an electronic copy of the service level you selected

B. Remote Technical Support

You may contact Nuance Customer Service Center to report any problem with your system. Normal operating hours are 8:00 AM to 5:00 PM (Local Time) from Monday to Friday. Depending on your Maintenance Service level, calls outside this time will be returned within 30 minutes for Critical and High problem evaluations. Nuance will respond to Customer's request following this problem evaluation chart:

| Critical | High | Medium | Low |
|---|---|--|---|
| <p>A down situation, wherein SpeechAttendant is not operational in production and a work-around is either not available, or, if available is unacceptable to you.</p> <p>The product may cause:</p> <ul style="list-style-type: none"> Corruption or destruction of data System to fail catastrophically (50% or greater reduction of service) Constant reboots of the system Sufficient degraded performance (throughput/response) such that there is a severe impact on use | <p>A major function is unusable and no work-around is available, but that you are able to do some production work.</p> <p>The product may cause:</p> <ul style="list-style-type: none"> System to be usable but incomplete (one or more documented commands/functions are inoperable/missing) System to fail catastrophically (10%-50% or greater reduction of service) Frequent reboots of the system Degraded performance (throughput/response) which causes a severe impact on use Delay in production rollout due to development issue | <p>There is a loss of a function or resource that does not seriously affect your operations or schedules.</p> <p>This category includes:</p> <ul style="list-style-type: none"> Issues associated with the installation of SpeechAttendant Any issue, which was originally reported as "Critical" or "Serious," but has been temporarily solved with a Work-Around, will be reduced to Medium. | <p>All other issues with SpeechAttendant.</p> <p>This category includes:</p> <ul style="list-style-type: none"> Errors in Product Documentation Instances when the Product does not operate strictly according to specifications and has no impact on the Product performance |

Nuance response time is detailed in the following table, in conjunction with the previous status:

| Case status | Description |
|--------------------------|--|
| Critical and High | Response: Nuance Technical Support will promptly evaluate the situation if it is identified that the problem cannot be resolved within the hour, Nuance will escalate the issue to senior technical staff or Development team as needed. Nuance will work toward providing a solution in as timely a manner |
| Medium | Response: Evaluation of the problem and action plan proposal within 24 hours. |
| Low | Response: Nuance will work towards a satisfactory solution on a best effort basis. At Nuance's discretion, problem may be resolved or postponed to a future release. |
| Enhancements | Response: At Nuance's discretion, enhancement may be promptly integrated, or postponed to a future release, if it is within the product development strategy. |